REPORT

FROM THE

SELECT COMMITTEE

ON THE

RECOVERY OF SMALL DEBTS,

IN ENGLAND AND WALES.

Ordered, by The House of Commons, *to be Printed,*
27 *May* 1823.

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REPORT.

THE SELECT COMMITTEE appointed to inquire into the mode in which DEBTS, amounting to less than Fifteen Pounds, are recovered, in *England* and *Wales*, and to report their Observations thereupon to The House;——HAVE inquired into the Matter referred to them, and have agreed to the following REPORT:

IT is perfectly well known, that one of the first principles of the ancient jurisprudence of this Kingdom was, that justice should be placed within the reach of every one of the inhabitants, by bringing it home to their doors, and thus saving them from the inconvenience and expense, which must necessarily be incurred when the courts in which their rights are decided are held at a distance from their dwellings. In order to effect this very important object inferior courts were established throughout the country, under the denomination of Courts baron, Hundred courts, and County courts. In these last, the Bishop, and the Earl of the county, were accustomed originally to sit, and every cause, of whatever magnitude, was decided. Their jurisdiction, however, was restricted by the statute of Gloucester, in the 6th of Edward I. to causes under the amount of forty shillings, and they have gradually fallen very much into disuse since that time.

If, however, a court being held at too great a distance from a man's dwelling is a great inconvenience to him, it is a much greater inconvenience if the proceedings, by which he is to recover that which is his right, are so expensive, that the sum for which he sues bears no proportion to the expense by which it is to be recovered. In this case, the inconvenience amounts to an absolute denial of justice.

This appears to be the case in all debts under fifteen pounds, according to the present law of England. Every witness whom the Committee have examined agrees in stating, that no prudent tradesman ever thinks it for his interest to sue for any debt below this sum.

They have received this evidence, not merely from tradesmen who might be suspected of exaggerating their grievances, but from persons engaged in the profession of the law, and especially from one gentleman, who was very actively engaged in opposition to a measure, introduced in a former session of Parliament, for the purpose of establishing courts for the more easy recovery of small debts.

The causes which produce this very disproportionate expense are, that there is no difference in the form of the proceedings, whatever may be the amount of the sum sued for: the pleadings may be as voluminous in an action for the recovery of a few shillings, as in one for the recovery of a hundred pounds. The defendant also possesses the same means of interposing vexatious delays, by all those modes of protracted litigation, which the wisdom of our law has given him, for his protection in those cases in which the largest sum of money is at stake.

Another cause is, that in the Country, all actions must be tried in the county town, whether they be decided at the assizes or in the county court, and therefore the suitor is put to the expense of bringing his witnesses many miles from their homes, and frequently of maintaining them for several days. The expense of these proceedings not only amounts to a denial of justice to the creditor, as has been stated above, but it puts it in the power of unprincipled men to harass the poor, and to compel them to pay money, which according to justice they ought not. The Committee beg leave to refer to the evidence of Mr. Hayward, from the office of the under-sheriff in Cambridgeshire, for a proof of the extent to which this evil may be carried.

These inconveniences have induced the Legislature, from time to time, to establish courts of request, for the recovery of small debts by a summary process, in different populous districts. In much the greatest number of these instances, the sum to be recovered is limited to forty shillings; and the constitution of the courts is, that a certain number of commissioners are chosen from among the substantial inhabitants in the different parishes comprised within the district for which the court is established. These commissioners sit in the court as it may suit their convenience, and are judges both of the law and the fact. In some few instances, the sum to be recovered extends to five pounds; and, in a very few, a barrister is appointed to sit with the commissioners, and to assist them in their deliberations. As far as the Committee have inquired into the proceedings of these courts, they appear to fulfil the object which the Legislature had in view very well; the process for the recovery of debts is very cheap, and their decisions give general satisfaction. But it is very much to be doubted whether this system could be advantageously extended to the whole country; and the jurisdiction of courts of this nature enlarged to greater sums. The Committee feel a great objection to departing from the tried and constitutional mode of trial by jury, so far as to give to the same person the decision both of the law and the fact, in actions for sums to the amount of fifteen or even ten pounds. The people of England are so deservedly attached to the trial by jury, that it is hardly possible to conceive that any other mode of trial, however cheap, would give equal satisfaction. Another obvious objection to the extension of this system throughout England and Wales is, that although in the large towns where such courts are now established, it is very easy to find intelligent and respectable men, well qualified to perform the duties of commissioners, it would be impossible to do so in more thinly peopled and less opulent districts. And if the jurisdiction of these courts was extended to ten or fifteen pounds, many cases might, and probably would arise, in which greater legal knowledge, than can be possessed by men of the habits and in the station of those who act as commissioners, would be required.

Mr. Anderton, secretary to the Metropolitan Law Society, and an attorney of considerable practice, suggested to the Committee, certain alterations in the mode of conducting actions, in cases where small debts were in question; which he thinks would so much diminish the expense of maintaining them, as to obviate all the objections to the present existing system, and to effect the object, which the Committee have in view, without any very material innovation upon the courts of justice. This proposition is, that the amount of the plaintiff's claim should be endorsed upon the first process, when it is issued from the superior courts, and that then a fair interval should be allowed to the defendant to pay the debt, and costs already incurred, before he was exposed to any further proceedings. Mr. Anderton, thinks, that this would generally induce the defendant to pay the debt without any further expense. In case, however, he still resisted the claim, the plaintiff

plaintiff should then be allowed to file his declaration, which should be restricted to twenty folios; and the defendant should not be allowed to put in any answer, unless he made an affidavit that he had good grounds of defence against the action. If he did not make such an affidavit, judgment to be entered up against him; if he did, the case then to be sent down to be tried at the quarter sessions or County court in the country.—The principal grounds on which Mr. Anderton prefers an arrangement of this nature, to regulating any inferior courts at present established, so as to render them efficient for the recovery of small debts, or to establishing new ones for that purpose, are, that the removing so large a mass of business from the courts in London, and carrying it through all its stages in the country, would be doing a great injustice to the London attornies, who have not only expended a large sum of money in qualifying themselves for their profession, on the faith of its principal duties being still confined to the Metropolis, but contribute also considerably to the revenue in stamp duties. Another of his reasons is, that if the business of small debts is transacted entirely in the country, no respectable attorney will practise in these inferior courts, and therefore encouragement will be given to men of the worst description in that profession.

The Committee, however, cannot allow these arguments to have any great weight. If the system proposed by Mr. Anderton, offered equal or nearly equal advantages to the Public, with one, according to which the whole proceedings upon small debts took their course in inferior courts, established or regulated for this express purpose, it never could be recommended to the legislature, wantonly to interfere with the interests of the London attornies. But it is to be observed, that according to this proposal, the expense arising from the conveyance and maintenance of witnesses, stated as amounting to two thirds of the whole, remains untouched. There is also introduced into it, a new principle, of very objectionable tendency: in order to save expense, and to diminish the number of contested actions, the defendant is not to be allowed to plead, unless he makes an affidavit that he has a good ground of defence. It is only necessary to state this part of the proposal, to make it obvious to the House, that it must lead to the most mischievous results, and be productive of frequent perjury. The Committee, therefore, hoping that they shall be able to suggest a much cheaper and more convenient mode of effecting their object, and one not liable to any objection in point of principle, do not think that this reason for adopting Mr. Anderton's proposal ought to have any weight with the House. With respect to the other reason, the Committee think that it must depend upon the constitution and rules of proceeding of the courts in the country, whether respectable attornies will practise in them, and not upon whether the process originates in them, or in Westminster-hall.

Two experiments have been tried, in the county courts of *Middlesex* and *Lancashire*, to improve this ancient mode of jurisdiction; barristers preside in each of these. In that of *Middlesex*, according to the Act which regulates the court, the barrister, who is called the county clerk, is empowered to have a voice in the decision of the jury, who decide by a majority of voices; but Mr. Heath, the present county clerk, has informed the Committee, that the invariable practice is for the county clerk to state his opinion as to the law of the case only, and to leave the decision of the fact to the jury, and that he believes the jury are not generally aware that they can do otherwise than come to an unanimous decision. The jury in this court usually consists of three persons of that class who form the petty juries in the courts of Westminster; and the proceedings are not in writing. The extent of its jurisdiction is forty shillings. The Committee have not

thought it necessary to go into any very particular examination, as to whether this court gives satisfaction to the persons who apply to it for redress; as Mr. Heath states, that although he considers it very well calculated for deciding upon causes to the amount of forty shillings, he doubts whether the process be not too summary to be extended to sums of ten pounds.

The regulations which have taken place in the county court of *Lancashire*, and which have rendered it much more efficient than county courts in general, have been principally owing to the rules of practice in that court, and not to any Act of Parliament. Mr. Addison, who is retained by the sheriff to preside in it, has been examined by the Committee; and it appears from his evidence, that the necessity of adopting all the modes of proceeding in the superior courts, renders it an inconvenient and expensive system of trial for Small Debts. The delay incident to proceedings in the county courts in general, is very much obviated by allowing entries to be made in the intervals between the regular days on which the court sits, at the office of the county clerk, as if they had been entered at the previous sitting of the court. In causes for sums above forty shillings, here, as well as in all the county courts, a writ of *Justicies* is necessary to enable the court to act; but from the peculiar circumstances of the duchy of Lancaster, this writ is issued from the chancery of the duchy at a much smaller expense than it can be in ordinary cases. During the last year, this court has held its sittings occasionally at Manchester, and this change has been productive of very great convenience to the inhabitants of that populous district, without any concomitant disadvantages.

The only other court to which the Committee wish to call the attention of the House, is a court for the recovery of debts between forty shillings and five pounds, which sits at *Hackney*, and whose jurisdiction extends over the parishes of *Hackney* and *Stepney*. A barrister presides in this court, and the trial is by jury in the ordinary mode; but the pleadings are very simple and the expenses very moderate. No attornies or counsel practise in this court, and it decides from fifty to sixty causes at each sitting; so that although the fee to the jury is only two shillings for each cause, the sum total which the jury receive for their day's attendance is sufficient to remunerate them, and no difficulty whatever is found in procuring an attendance of jurors.

The Committee having stated to the House these different systems which are in activity in different parts of the Country, and having already stated it as their opinion, that as the law at present stands, there is a positive denial of justice to creditors of sums under fifteen pounds, in all parts of the Country in which no separate jurisdiction has been established, feel it their duty most earnestly to recommend to the House, that some general measure should be adopted, if not for the recovery of debts to the whole amount of fifteen pounds, at least to the amount of ten, in a more cheap and convenient mode. For this purpose, they think it will be better to regulate the ancient County courts, rather than to establish any new jurisdiction; and when it is considered that forty shillings, to which the jurisdiction of the County court was limited in the reign of Edward I. was a sum then, much more than equal to fifteen pounds now, they do not consider that they are recommending any innovation upon the ancient law.

The mode in which the Committee would regulate the County court, so as to render it a more efficient and equitable mode of administering justice than it is at present, will best be understood by stating the disadvantages under which it at present labours, and then the remedies proposed for them.

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As this Court is at present constituted, the persons who are supposed to act as judges, both of the law and the fact, are the freeholders of the county, and the County clerk is only considered as their officer; but it seldom happens that freeholders of respectability attend, and consequently the County clerk, who is only an annual officer, and who is also a practising attorney, has a very great influence upon their decisions. There is a great objection, according to the principles of our law, to the same persons being judges both of the law and the fact; but this is increased, to a very great degree, by the circumstance of the person who has most influence in such a decision being a practising attorney, necessarily connected, by his professional avocations, with many of those persons who appear as suitors before the court. This alone would render it extremely improper to extend the jurisdiction of the County court to any larger sum than forty shillings, unless at the same time such changes were made in its constitution as to obviate this objection. Besides this, there are other inconveniences attending the practice of this court, which require a remedy; the only means which it posesses of compelling the attendance of any party, is by distraining upon his goods, and this process is to be repeated from time to time, until he think proper to appear; this too, is the only mode in which it can enforce compliance, even with its judgments; and as, except in some very few counties, it does not possess the power of selling the goods so distrained, they are accumulated in lumber rooms without being of any use to the plaintiff, although, certainly the loss of them may be a great inconvenience to the defendant.

The pleadings, also, are in the same form as in the superior courts; and as the court sits only in one place in a county, the expense of conveying and maintaining witnesses, must be nearly as great as it is in a cause tried at the assizes.

In order to remedy these defects, and to make the County court a proper jurisdiction for causes of larger magnitude, the Committee recommend the following alterations in its constitution and practice:

A barrister of six years standing should be appointed as assessor to the sheriff, to hold his office, *Quamdiu se bene gesserit*, and to sit as judge in the County court. The Committee have felt some difficulty in deciding to whom the appointment of the assessor should be intrusted. By the constitution of this country, it is one of the undoubted prerogatives of the crown, that the king should have, generally, the appointment of the judges, and of all the other public functionaries, to whom the administration of the laws is deputed; but the recommendation of fit persons to fill all these offices does not rest entirely with the king's confidential ministers. They have the appointment of the judges of the superior courts, but the names of the magistrates are put into the commissions of the peace by the custos rotulorum of the respective county, and the lord chancellor rarely interferes, except in peculiar circumstances. The Committee would have felt great objection to recommending such an increase to the influence of the crown, as the giving the appointment of so many new officers to the administration, must necessarily produce; but they see no difficulty in intrusting it, subject to the approbation of the lord chancellor, to the custos rotulorum in each county. This is, in fact, the manner in which all the local magistrates are at present appointed, and the assessor to the sheriff can only be considered as one of them. There is every security for a good appointment, in the rank and station of the custos rotulorum; he lives generally amongst those who will be most interested in the decision of the assessor, and every feeling of respect for his own character amongst

his neighbours, would render him desirous that this office should be respectably filled.

In order to give the assessor a proper control over the inferior officers of his court, they ought to be appointed by him, and to hold their offices during his pleasure.

In order to obviate the inconvenience which arises to claimants of small sums, from the distance to which they are at present obliged frequently to travel, in order to try their causes, the court should go periodical circuits in the county, and hold its sittings at such principal towns as the justices at quarter sessions shall think proper. These circuits will probably be sufficiently frequent, if they take place four times during the year. The court should hold pleas of debt by specialty and simple contract, and of assumpsit, for the recovery of debts, and of detinue and trover, wherein the title of freehold or copyhold, or lease for years, or any other general right, is not in question.

According to the evidence which has been taken, the sum to which the jurisdiction of the County court ought to be extended, is fifteen pounds; and this is the limitation which the Committee are inclined to recommend, But if the House should be of opinion, that in the first trial of so large an experiment, this would be too great an innovation to adopt at once, the country would derive great advantage even from extending the jurisdiction to ten pounds.

The trial should be by a jury of twelve; and in order to diminish the pressure upon persons qualified to serve on juries, which this additional service will impose upon them, it will be desirable that copyhold and leasehold property should be a qualification to serve on juries in the County court, as well as freehold.

One of the great evils which require a remedy, is the great length and expensive nature of legal proceedings, when small sums are in dispute. The process, therefore, ought to be as simple as possible; and none of the proceedings liable to any stamp duties. It appears to the Committee, that this form will be sufficient for the commencement of the action, "*A. B.* complains that *C. D.* owes him ———" and then should follow such a statement of the particulars of the demand, as is usual in a tradesman's bill. It is not desirable that even so simple a form as this should be required to be too strictly adhered to; all that the court ought to demand is, that the defendant should be made clearly to understand the amount of the claim which is made upon him, and from what it arises.

A copy of this form should be served upon the defendant a fair time before the day on which the court is to decide on the claim; if he does not appear on that day, judgment to be given for default of appearance, and an inquiry before the jury to be instituted as to the amount really due, and judgment entered up accordingly.

If the defendant denies the justice of the whole or any part of the demand, his denial should be stated in as simple a form as the demand has been made; this denial should be served on the plaintiff; and the cause then tried as soon as is practicable.

The court must have the power of compelling the attendance of witnesses.

The assessor may have the power, when he thinks fit, to allow the defendant to pay his debt by instalments; but if the time given extends beyond a certain moderate fixed period, he must be required to take security, not for the payment of the money, but for the appearance of the defendant.

defendant. If this security is not taken, this privilege is liable to great abuse; and the Committee have perceived that in all the courts where this power exists, it is very constantly exercised, and in many instances to an improper extent.

Whatever objection there may be, to establishing courts without appeal when the causes to be decided by them are of great importance, it is quite obvious, that if a power of appeal is given in courts such as those which are the subject of this Report, all hopes of establishing a cheap jurisdiction must be given up. The decision, therefore, of these courts must be final; but if it should appear to the assessor that the decision of the jury has been directly contrary either to law or to the evidence, he ought to be empowered to order a new trial. This power to be exercised only once.

The Committee have taken one circumstance into consideration, not immediately connected with the arrangements hitherto recommended. The great extension of credit appears to them to be an evil of considerable importance; and they have thought, when they are giving to creditors easier means of recovering their debts, it will not be unreasonable to require that they should not allow so long a period to elapse before they demand them, as is now frequently the case. The usual time at which tradesmen send in their bills is at the end of the year; if therefore another year is allowed them to endeavour to recover what they demand, it does not appear that they would have any reasonable ground of complaint. The Committee therefore recommend that, subject to such regulations as the necessity of the case requires, no man shall be allowed to recover a debt in the County court which shall have been outstanding two years. Such an arrangement must ultimately be equally beneficial to the creditor and debtor.

All general rules for the practice of these courts ought to be established in such a manner as to secure uniformity in their proceedings; to effect this object, some one power ought to regulate the whole. The judges of one of the superior courts in Westminster Hall are undoubtedly the persons most competent to perform this duty; and the Committee, taking into consideration the great mass of business at present imposed upon the courts of King's Bench and Common Pleas, are inclined to intrust it to the barons of the Exchequer.

The process for the recovery of debts in the County court, ought, as has been stated above, not only to be as simple as possible in its forms, but even a formal departure from any of the regulations of the court, provided it does not interfere with substantial justice, ought to be overlooked by the assessor. If this suggestion is properly carried into effect, the Committee hope that no man will be under the necessity of employing an attorney or counsel. Great advantage would be derived from the exclusion of attornies and counsel from the court, if this was practicable without great inconvenience to the suitors; their attendance and practice must be productive of delay as well as expense; and it is most desirable that every possible dispatch which is consistent with justice should be secured. In the *Hackney* court, from whence attornies and counsel are excluded, and where, in consequence, fifty or sixty causes are decided in a day, to the satisfaction of the parties, two shillings for each cause gives an ample remuneration to the jury; whereas, if the proceedings were slower, it would be necessary to apply a much larger sum to this purpose. The Committee, however, are not prepared to go the length of recommending the absolute exclusion of attornies and counsel from the county Courts, for they not only foresee many cases in which it might be extremely inconvenient to deprive a party of the privilege of employing an attorney; but they might also, by excluding regular attornies, introduce into the practice of the court

a much worse description of persons. It is very desirable, however, that parties should be discouraged from going to this expense. The Committee therefore recommend, that no fees to attornies or counsel should be allowed in costs. Those who think proper to employ them may do so, but they should themselves pay for the convenience which is thus afforded them.

The next point to which the Committee have to call the attention of the House, is one of some difficulty and of considerable importance; it is, to the mode in which the different officers of these courts are to be paid. The first question is, whether they should receive fixed salaries, or be remunerated either by fees or in any other manner, by which the amount of their emoluments shall depend upon the quantity of labour which they perform. Generally speaking, this latter mode is the one which secures the greatest activity, and induces the officer best to do his duty. To this, however, there are several exceptions, and of those the most striking example occurs in the office of a judge. The purity and efficiency of the administration of justice, requires not merely that nothing improper should be done, but that nothing improper should be suspected; and it is the duty of a judge on the one hand, not to interpose any unnecessary delay in his decisions, and on the other, to give full and fair time for the consideration of the causes which come before him. Now, it is obvious, that if he is paid by fees, it may be his interest to press causes improperly to decision; or, if according to the frequency of his sittings, improperly to delay his decisions; and although he may not really be influenced by any such considerations, he will be necessarily subject to suspicion. The Committee therefore, are decidedly of opinion, that the assessor ought to receive a fixed salary. The other officers of the court may be advantageously paid by moderate fees, to be established in the act which regulates the courts.

The next question is, from what source the salary of the assessor is to be paid. It is only reasonable and just, that those who derive benefit from his labours, should provide the fund from which he is to be remunerated. Besides, therefore, the fees which are to be applied to the payment of the inferior officers, other fees must be required, which as far as can be calculated beforehand, will provide a fund, which on an average will fully replace the salary which the assessor is to receive. The arrangement which the Committee are inclined to recommend is, that these additional fees should be carried to the account of the County rate in each county, and the salary to the assessor be paid from it in return.

The amount of the salary must vary in different counties; and it will be most expedient to leave it, within certain limits, to the justices in quarter sessions, to determine how much their county will require.

The Committee have now gone through the different alterations which appear to them to be required, in order to render the County court a competent jurisdiction for the recovery of debts under fifteen pounds; and only one other subject remains, on which they are called upon to state their opinion to the House.

It has already been stated, that parliament has been induced to establish separate courts for the recovery of small debts in different populous districts. It would be very imprudent to interfere with these jurisdictions; for however much the Committee may hope that the plan which they have recommended, is likely to succeed if adopted by the legislature, it still only is an experiment, and it would therefore be highly improper to substitute

substitute it for existing courts, whose jurisdiction at present gives satisfaction upon trial to the parties most interested in them. The Committee do not therefore, propose that the jurisdiction of the County court should be extended to any district, from whence it at present is excluded; but as most of these courts hold pleas for sums much under the amount of that, to which the jurisdiction of the County court is proposed to be enlarged, it may be proper that even in those separate districts, the County court should be empowered to hear causes, where the debt claimed to be recovered exceeds the jurisdiction of the separate court.

The Committee, in concluding their Report, beg leave most earnestly to recal to the recollection of the House, that the enormous expense of law proceedings at present, is the principal defect which can be attributed to the civil jurisprudence of this country; and they trust, that if the House shall agree with them in thinking that the suggestions which they have offered afford a probable means of remedying this defect, it will take measures as speedily as the importance of the subject will allow to carry them into effect.

27 *May* 1823.

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MINUTES OF EVIDENCE.

Lunæ, 3° die Martii, 1823.

Lord Viscount ALTHORP, in the Chair.

Mr. William Arrol called in, and Examined.

Mr. William Arrol. (3 March.)

WHAT business are you in?—A bootmaker, in Regent-street.

How long have you been in business?—I have been in business ever since the year 1796: I formerly lived in Pall-mall.

So far as your experience enables you to give an opinion, what is the effect of the present law, with respect to recovering debts under 15*l.*?—We consider them the worst class of our debts; because the difficulty in recovering them, without incurring a very great expense, deters us from suing for them. When we cannot otherwise obtain payment, we therefore prefer, with persons of the worst credit, to give them credit beyond 15*l.* rather than restrain our accounts under that sum, that we may thereby have a more summary way of suing and recovering.

What is the reason why you prefer debts above 15*l.* to debts under 15*l.*?—The process for suing for debts under 15*l.* does not hold the debtor to bail, and a very great expense is incurred, at least 18*l.* if not more, before any security for the costs can be obtained; and if the party should abscond previous to the bringing the trial to an issue, we must leave the business, and pay the costs ourselves.

What is the expense of the first process of suing out a writ for the debt?—The process for suing out a writ for a sum above 15*l.* attending on the bail and the arrest, and so on, amounts to between three and four pounds; but for merely serving a copy of the writ for a sum under 15*l.* it is between two and three pounds, in the first instance; but I beg to say, that we have ever found it the case, even with the respectable class of attornies, that they have most rapidly run up the expenses to a great amount.

Will you state the process of enforcing the recovery of a debt under 15*l.* so far as your experience goes?—I really am unable to express myself sufficiently intelligibly on that subject; but I know that before any thing is done, before we can secure ourselves against the loss incurred, they must amount to more than 18*l.*

Is that the case, whatever the sum sued for, may be?—For any sum; for 4*l.* it is the same as 14*l.* The defendant not being held to bail, if he absconds before the costs run up to 18*l.* the plaintiff must pay the costs. I beg leave to say, that I once sued a gentleman, a good many years ago, (I thank God, I am wiser than to do so now;) it was brought to that state, that I had no other remedy; I sued him for 5*l.* odd, and without delay or protraction, his costs came to 60*l.*

Do you mean the costs in defending it?—Yes, the costs in defending it.

What did your's come to?—Mine came to some trifling sum.

He was cast, of course?—He was cast, because I substantiated my claim.

Did you recover the original debt?—Yes; with some small costs; by-costs, as my attorney called them.

In what court was this?—The court of Common Pleas. The judge reprobated it exceedingly; but I beg leave to say, that, in the recovery of small debts, there is more difficulty thrown, both on plaintiff and defendant, than there is in the recovery of larger sums, even though the tradesman is subject to the necessity of going on after he has sued, and run into a considerable sum, in the recovery of a small sum. The defendant resents it very much; he feels as if it were done merely to subject him to expense, and through the same feelings of resentment, he refuses payment; and so it goes on, and a prodigious expense is incurred. Indeed, I may mention a case where an expense of 220*l.* was incurred for the recovery of 9*l.* we, therefore, as prudent men, abandon a great proportion of those kind of debts, if we cannot obtain them by mere solicitation and application.

Have you ever sued any person in the court of requests of Westminster, in Castle-street?—Yes, I have for small sums under forty shillings; but there are few cases in my business that come within the amount of forty shillings: for in-

Mr. William Arrol.

(3 March.)

stance, a pair of boots costs two guineas; my business is of that nature, not being retail: but among noblemen and gentlemen every article is bespoken by gentlemen who are either recommended to me, or gentlemen of some situation in life; and their articles generally amount to more than forty shillings; and if they do not, they probably not being resident in London, I have no means of recovering: I have sued in the court of Guildhall for sums under 5*l.*

At what court in Guildhall?—There is a five pound court in Guildhall; a barrister presides; a court of requests it is called; they decide cases under 5*l.*; and if the parties, through obstinacy or otherwise, suffer the whole process of the court, it comes to 8*s.* 6*d.*

That is a summary jurisdiction?—It is, and it is decisive; there is no appeal.

Does that court of requests at Guildhall extend to Westminster?—No.

It only extends to the city?—Only to the city.

Have you sued for any debt under 15*l.* lately?—Not very lately; I have really and truly been deterred from so doing on account of the expense; I have a vast number of those debts on my books. The Palace court extends only to ten miles from London, and the respectable class of tradesmen in London extend their credit beyond that limit; for instance, my own business extends to many country gentlemen.

What is the nature of the Palace court; is it a court of requests?—No; we may sue for any amount in the Palace court; but they are only enabled to give a decisive judgment in cases where the sums are under 10*l.* By moving the court, cases above 10*l.* may be removed into the court of King's Bench, and then we are as if we had just begun; but it extends only ten miles from London.

What is the expense of suing in the Palace court for sums under 10*l.*?—Ten pounds eight shillings; that is the expense for any sum above forty shillings, and it is too great for sums of 4*l.*

When you talk of this enormous expense, that arises principally from the attornies bills?—It does.

Do you know what would be the necessary expense of suing in any of the courts of Westminster for a debt under 15*l.* exclusive of the attorney's bill?—The attornies make out those costs, and I do not know how they are to be separated; we tradesmen, I imagine, are not able to separate them; they charge altogether, what they do and what they pay for stamps, and altogether included.

It is at the option of either party to produce this heavy charge; if the defendant chooses to defend the action vexatiously, it compels the plaintiff to incur those costs?—Certainly.

Mr. *Donald Currie* called in, and Examined.

Mr. Donald Currie.

WHAT is your business?—I am a hatter, in the military hatting line.

How long have you been in business?—Sixteen years.

In Westminster?—Yes; I was in the Haymarket the principal part of that time; I am now in Regent-street.

What experience have you of the effect of the present mode of recovering debts under 15*l.*?—It appears to me that the great difficulty that we have in cases of that kind is, that unless we proceed to the expense of a Marshalsea writ, we cannot recover any sum above 2*l.*

What is the expense of a Marshalsea writ?—I have been told it comes to about 8*l.* the expense all together.

What proportion of your debts do you consider to be under 15*l.*?—I have about 560 accounts upon my books, and out of those I find that there are 253 for sums under 5*l.*

Should you think it worth your while to pursue any legal process to recover those debts under 5*l.*?—My customers in general are military men, they are in various parts of the country; I have no means of applying to them except by the law, if they do not pay me; consequently when the sum is so small I never apply to them until they either come to London, or are brought to full pay, so that I can recover it without expense; because if I apply to an attorney, the expense immediately commences, and there is no end of it, for I have known so many instances in which I have been run up to a considerable sum without recovering at all.

Will you state some of those instances?—I cannot in a moment remember any case for a sum under 5*l.* I never proceeded against any one on account of the expense.

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So that in point of fact in this very large proportion of the debts on your books, you feel that it would not be worth your while to resort to a legal process for the recovery of those debts?—Certainly not. I consider the general average of those debts to be fifty shillings; and I should think myself very fortunate if I could recover even two thirds of them.

The writ that you talk of is a writ in the Palace court?—It is.

Therefore, it is of no use to you unless the person you are suing is within ten miles of London?—No.

Supposing that you had a greater facility in recovering those debts, do you imagine that a less price would be charged for the articles?—No doubt. In a case where we are sure of the money, of course every tradesman will sell his goods cheaper than where there is a greater risk.

You are aware of the inference resulting from this, that those who do pay are charged for those who do not?—If we were sure of our debtor, we should not charge upon the general run the same quantity of profit.

If there were a certainty or any thing like a certainty of recovering debts, do you think the customers would get the goods cheaper?—There is not the least doubt of that.

Would that difference amount to about the same as the abatement you now make for ready money?—It would be something near about that, because the difficulty that we now have to get payment for our bills imposes a difficulty on us to meet our own bills.

Do not you think it would amount to more than that?—I should think not.

In that case would not you expect that your loss from bad debts would be less than it is now?—Certainly.

Then you would be able to trade with a smaller profit?—Certainly; but if a tradesman has almost any profit where he has the money coming into his hands instantly, he will sometimes sell them at very little profit.

In that case would not you deal with all your customers nearly upon the same terms as you deal with your ready money customers now?—In cases where the tradesman is paid in ready money, he sells almost at prime cost, but he cannot go below that of course.

In your business you must have a great number of debts under forty shillings?—Yes, I have.

Have you ever sued for them in the court of requests?—I always found it so hopeless that I never did.

Why have you not sued in the court of requests?—The reason is because when a person owed me thirty shillings, or from that to two pounds, if I found he would not pay it by asking, I conceived that he could not pay it in any other way; it is a common saying among us, that it is sending good money after bad.

Do you know the expense of suing in the court of requests?—I do not; I was one of the commissioners once; but I believe, even in that court, they may run to a good deal of expense, by delays and re-hearing, and so on.

Have you ever sued in the court of the county of Middlesex?—No; there is no doubt there are many persons who get into our debt, knowing that we cannot recover without proceeding into an expensive course, and who are, therefore, inclined to take advantage of us, and will not pay us; they know very well that a tradesman will not go to much expense for the recovery of it, that they would rather loose it; I know that is the case with myself.

You conceive then, that it would be very expedient and very much for the advantage of the trade, that there should be some new means found of facilitating the acquirement of the debts that are due to tradesmen?—Most assuredly, because some times a debt may be owing where there may be some dispute about it, and it is desirable to bring it to an end; and we cannot do that without bringing it to a higher court where the expense is great; if there was any way, any cheap way, of trying the question by which a tradesman could get a decision, then he would be satisfied, because he would know whether a man could pay or not.

You mean then, that it would be of great advantage if tradesmen had the means of knowing that the debtor could not pay, that in cases where there finally would be no money forthcoming, it would be a great advantage to a tradesman to know that?—Certainly.

Have you ever thought of any mode in which this could be done, in which you could have this cheap mode of deciding?—We very often cannot tell whether the person can pay or not, because they very often make a show when they have not the

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means of paying; but if we could get that decided, if the expense did not exceed one-third of the original amount, we should often resort to it.

As the law at present stands, is it not in the power of a vindictive creditor to the raise a small debt to a very large sum by legal proceedings?—I rather think it is.

Mr. *Thomas Laidlaw* called in, and Examined.

Mr. Thomas Laidlaw.

WHAT is your business?—A boot and shoe maker.

Where do you live?—At No. 4, Coventry-street.

How long have you been in that business?—Either three or four and twenty years.

From your experience, what is your opinion of the present mode of recovering debts under 15*l.*?—The expense we incur in recovering them has many times prevented me from suing for them at all.

Have you ever been put to any great expense in suing for them?—I cannot say that I have; I have lost many sums in suing for such as came to the amount of thirteen and fourteen and fifteen pounds, but never came to an action.

In what way then have you run to that expense, if you did not come to an action?—The party perhaps has absconded; and some have gone into prison and taken the benefit of the Insolvent Debtors Act.

Could they do that for sums under 15*l.*?—They have owed a number of people besides me.

What proportion of your debts are below the amount of 15*l.*?—I should think on a yearly account, pretty nearly two thirds.

What proportion do you think are under 5*l.*?—I should think about one third.

If the parties owing those sums do not choose to pay you readily, you do not consider it worth your while to sue for two thirds of your debts?—Prudence would prevent me in a great many cases from suing.

Have you ever sued in the Palace court?—Several times.

What has been the result of those actions you have brought in the Palace court?—Some I have recovered, and some have gone into prison and taken the benefit of the Insolvent Debtors Act.

In those that you have recovered, should you have thought it worth your while to go to a legal process?—I do not know that I should have sued them if I had known they would have resisted so far as to come to trial.

Why?—For fear of the expense.

What has been the expense?—The expense is eight, nine, or ten pounds, if there is no resistance before we can get an execution, if the sum is under 15*l.*

Is that expense incurred merely for the writ?—No. There is a copy of the writ, and then there are two or three different processes issued; altogether it comes to that.

That is when there is no resistance?—Yes.

When there is a resistance, what is the amount?—I am not exactly aware what the amount may be if there is a protracted resistance.

What is the largest amount of expense you have ever been put to by resistance?—I think one was 22*l.*

Do you recollect the amount of that debt?—It was between ten and eleven pounds.

Did that expense fall upon you, or upon the defendant?—The defendant ultimately paid it; he got a person to come forward to give a joint bill, and he afterwards paid it; I got it after waiting some time for it by his giving a collateral security.

As the defendant pays the costs, how is it that you do not think it worth your while to sue in consequence of the expense?—Because there are so many that do not pay after the expense has been gone to. I have heard of cases, and indeed more than that, I have experienced them myself, after having gone to the expense, and after we have got a verdict, the party has thrown himself into prison and taken the benefit of the Insolvent Debtors Act; and this operates not only on me but on other tradesmen.

Although a man cannot be arrested for a debt under 15*l.* if in addition to the costs of the suit it amounts to more than that sum, then he can be arrested?—If there is a note of hand he can be arrested for 10*l.*

Supposing the costs of the suit, in addition to the debt, make the debt amount

to

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to more than 15*l.* cannot he be arrested then?—No; that makes no difference, the original debt must be 15*l.*

Cannot you arrest after judgment given?—Certainly, after judgment given, but not till we obtain judgment.

What is the shortest time that has ever elapsed in your experience between suing out the writ and recovering the debt, where the action has been defended?—In one or two instances with me, I think three, it has been protracted above a twelve-month.

That is the longest time?—Yes.

What is the shortest time when the action has been defended?—Never less than six months.

Can you tell us what is the average expense of recovering a debt when the action is defended?—If it comes into court, it is never less than 60*l.*

Do you mean the total expense of both parties?—Yes.

Have you ever sued any persons in the court of requests in Castle-street?—Yes, I have.

What is your opinion of the process in that court?—It is not so respectable as I should like to see it, there is any thing but order. I have seen them at Fulwood-rents in a great deal better order; but as to the court in Castle-street, I never saw so much want of order in any place as there is there; every one is speaking and no one hearing.

How did it end as to the recovery of the debt?—They settled it very quickly.

Then it is an advantageous court for a tradesman to sue in?—Most assuredly it is; there is very little expense, and it is done immediately.

What is the expense in that court?—I do not think that even coming to an execution it exceeds seven and six-pence.

Who presides in that court?—There are three commissioners.

Who are the commisioners?—The commissioners are tradesmen that have generally been the overseers and the churchwardens of the parish.

Who appoints them?—I really am not aware.

The court in Fulwood-rents that you allude to, is the Middlesex county court?—It is.

Have you ever sued in that court?—They are much the same; they are very summary; I think there are three days; there is the summons, and the order, and the execution.

What is the expense of suing in that court?—I think it is eight and six-pence.

What is the amount of debt that you can sue for in that court?—The same as the other.

Is there a jury in that court?—There is a jury and a barrister sitting as chairman.

How many does the jury consist of?—I think twelve.

Are all the twelve jurymen always there?—When I was there, I have been there several times, they appeared to be all there.

You did not count them?—No.

Had you a good opportunity of seeing them separate from the rest?—Yes; it struck me from just looking at them, that there was the number.

You say in this court, there are the summons, and the order, and the execution, how long does that take?—Three different sittings, a week at each time.

That would make three weeks?—Yes; if they come at once on the first summons, then there is the hearing and it is over at once, the moment they appear it is decided.

When you apply for your summons, the defendant is not there of course?—No.

After you apply for the summons, what is the next process?—If the person does not attend to the summons, then we take out an order.

When you take out the order he attends the next court day?—Then it is heard the directly, if he attends.

After having taken out the summons, supposing he attends, did it ever happen to you to see a defendant ask for further time?—If he has stated that there was some evidence that he could bring forward that is material, it has been granted.

Has it ever happened to you when you have taken out an order, that the defendant has not attended to that order?—I do not think it has happened to me.

Do not you know, supposing the defendant does not attend to the first order, that there is a second order made, what is called a summary order?—That is the last.

Then, if he does not attend to the first order, a summary order is made, by which

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he has given to him the option of attending or paying the debt?—A summons is first, and then the order is given.

Upon the whole, do you consider the process in the Middlesex county court, a convenient process for the tradesman?—I think it is the most convenient, I ever saw.

And you think it would be of advantage, if something of the same sort of process were instituted for the recovery of debts under 15*l.*?—I think it would be the greatest advantage almost a tradesman could have.

Have you ever had occasion to sue persons in the court, which sits at Hackney?—No.

Mr. *Robert Taylor* called in, and Examined.

Mr. Robert Taylor.

WHAT experience have you of the present mode of enforcing the recovery of debts under 15*l.*?—I generally find it a very difficult matter to recover debts that do not amount to an arrest; we generally make every application we are able to do without suing; and if we do attempt to sue, we frequently, I may say generally, lose. We do not always lose; but we are considerable losers in some cases; and in consequence of that, we are very loth to begin to sue. I have paid as high as 18*l.* in endeavouring to get a debt of two guineas and a half, and did not get it; particularly where a gentleman removes from one county to another, it puts it out of our power to bring him to book so soon as we could do if he was to remain in the same county. Now, I lost, but a very little time back, 12*l.* odd in suing a man for a sum under 12*l.*; he died; but I could not get hold of him without a great loss, in consequence of his being down at Preston. But we have a vast number of debts that do not amount to 5*l.*; there we are losers materially, because we cannot sue for those debts without considerable loss, or a great risk. Our business is not a very large business, but our debts are very numerous of that description. I have just run over my books, and I find that we have three hundred debts and something more, under 5*l.* and a considerable number more under 10*l.* My business is a business that does not run up large bills; I am a bootmaker; and a gentleman will perhaps come in and get a pair of boots and a couple of pair of shoes, and I never see any more of him; and if I do find him out, when I press him for the money, he feels angry, because the sum is so small. There are others that go away, and when they come back, they forget these small sums, and they feel angry because they forget it; and I also feel angry, because they get thus far into my debt, and do not have any thing more.

Do you think it worth your while to proceed legally for the recovery of those debts under 5*l.*?—In some cases we may do so; but there are a great number that we do not, because if we sue, we just go on and have the expenses fall more heavily on ourselves; and by suing, we are afraid that, after running up our expenses to 15*l.* they will, in the course of that time, get more into debt, and make up their minds to take the benefit of the Insolvent Debtors Act; that we have found to be the case with a great number.

If there was no Insolvent Debtors Act, should you think it worth your while to sue for debts under 5*l.*?—We should sue for more than we do now.

You were in business before the Insolvent Debtors Act passed?—Yes; we sued for more then, than we do now; and I think the people were not so bad as they are now.

Did you suffer many losses at that time, in suing for those small debts?—Not so much as we do now; at that time we were far better off in the recovery of debts. Before that we could hold a man to bail for 10*l.* and a great many people would not get into debt so often as they do now.

When you state, that the number of debts you have under 5*l.* amounted to three hundred, what proportion do you consider that to be of the number of debts you have on your books?—I cannot exactly say; but, I suppose, from one-fourth to one-third.

Have you been in the habit of suing persons in the Palace court?—Always, if I can, I sue in that court.

What is the expense of suing in that court?—The expense, I think, is nearly as much as the other for small debts; but it brings the business to a conclusion sooner.

As what other?—As the court of King's Bench. I always sue in the Marshalsea court, for two reasons; the one is, the Marshalsea court is held every Friday, and in the course of the third term they must come to some kind of settlement; and

again,

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again, I have got money in the Marshalsea court, when I should not have got it in the King's Bench court.

Did you ever sue any body at the court of requests in Castle-street?—I have done so, once or twice; and a few times in the City and the Borough. Those courts go as far as 5*l.*; but the City and the Borough are, both of them, far better courts than the other, the reason, perhaps, why they may be better is, I think, in the other courts there are generally lower kind of people brought up; in the City court, I have not seen that kind of people.

Which people do you mean, are not so low?—The people that are summoned; they are generally poor people that are summoned to those courts; but in the city of London, I have not seen them so much in that way.

Did you ever sue in the court in Fulwood's-rents?—I did once.

What was the result?—I was paid my money without any expense; it was a general in the army that I summoned there.

The expenses of this court are paid by the defendant, of course, when he is cast?—They are, but it is very small; but for debts above forty shillings, the least expense, I believe, is 1*l.* 15*s.*; but, I do believe, that, if there were a law to enable us to recover from forty shillings to fifteen pounds, a number of people would not get into debt that do now, because they think that they can play with us tradesmen; now, if they owe five or six or seven pounds, they can shift about from one place to another, they think we will not go to law with them.

Should you think it a great advantage to the trading part of the community, if the court at Fulwood's-rents was allowed to act for debts to the amount of 15*l.*?—I should think it would be a very material benefit.

You are not much acquainted with the mode of conducting business in Fulwood's-rents; you never sued there but one once?—One or twice.

If a stranger applies to you for any articles, do you think it necessary to inquire his character?—We always do, if we like him; sometimes we get a man that we know at once that he is not fit to be trusted; but where we are deceived most is where gentlemen give us references to other gentlemen.

The result of that is, that you conceive it impossible for a tradesman to ascertain the character of those who order goods of him?—It is so.

Would you think it a great advantage, supposing you were able to establish at once that your debtor had no assets, or that he could not pay you at all; would it not be an advantage to you to ascertain that at once?—Certainly; we have in some instances, where a man has got into our debt perhaps from ten to twelve or fourteen pounds, we should have been glad to serve him with some other things, to make it fifteen; I have done that several times. In one case, I only wanted a pair of shoes to make it up 15*l.* and I was strongly advised not to trust the man any further; but I sent the shoes, and then I arrested the man, and afterwards got ten shillings in the pound.

Then you think that of course you are obliged to charge generally more for your goods, on account of the uncertainty of your payment; if you were sure of your money, you would not charge so much as you do now; so that it would be better for the consumer?—It certainly would be better for the consumer; but I do not know that I make a difference in that respect; but this much I can say, that I have been in business now the best part of twenty years; I have about 18,000*l.* upon my books, and I have not 100*l.* above paying my bills: all the money I have saved in my life is on my books.

I suppose you have, at different times, lost considerable sums of money?—Yes, we have.

Supposing there was any process by which you would have lost a considerably less sum of money, do not you think you could have afforded to sell your articles at a lower rate?—It certainly would make a difference; it would not operate only in one way, but more, because it would afford us the means of going to market in a different way.

What is the greatest length of time, after you have sued out your writ in the Marshalsea court, to which you have found your debtor able to ward off the judgment?—We have never gone longer than three weeks.

Where the defendant has resisted?—Yes; there may sometimes be some greater delay; but we generally find that the thing is settled in about three weeks.

Is there any jury in the Marshalsea court?—Yes.

Is the Marshalsea court sitting every day?—Only on Friday.

Mr. Francis Smedley called in, and Examined.

Mr. Francis Smedley.
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YOU are deputy high bailiff of Westminster?—Yes.

What experience have you of the mode of recovering debts under 15*l.*?—I have the experience of a professional man in a general way.

What has been the result of that experience?—That it would be very beneficial if some court were established to prevent the immense mass of costs that are necessarily incurred in procuring the payment of debts under 15*l.*

What is the average expense in the common process?—It is impossible to put an average, for it depends so much upon the conduct of the defendant as to the pleas he may choose to put in to the action, and the various ways in which he may delay it before judgment can be obtained.

What is the expense of the writ?—I believe generally two guineas and a half.

Does the expense of the writ depend upon the amount of the debt?—Under 15*l.* not at all, but above 15*l.* it is greater if bailable.

Will you state the process that is necessary to go through for the purpose of recovering a debt under 15*l.*?—The writ is a serviceable writ, which is merely served upon the defendant, he puts in no bail at that time, and in the course of a given period, if the action is not settled, a declaration is prepared.

What is the expense of preparing the declaration?—That again depends upon the length of it and the nature of the action.

Is the expense of preparing a declaration where the debt is under 15*l.* less than the expense of preparing a declaration for any higher sum?—It entirely depends upon the length of the declaration.

Does the expense in any case of preparing the declaration depend upon the amount of the debt?—No; the nature of the debt.

Is it not usual in preparing a declaration to put in different counts?—It is.

What is the expense usually of filing a declaration?—Perhaps seven pounds up to the filing the declaration.

What is the lowest expense at which you can file a declaration?—Three or four pounds coupled with the writ.

What is the expense of the declaration separately from the writ?—Thirty shillings perhaps.

What is the largest expense you have ever known?—I cannot immediately say, it may be swelled to six or seven pounds.

After the declaration is filed, what is the next step?—The defendant is to plead to it; he may plead a dilatory plea, or any other plea.

The pleas that the defendant puts in must be at his own expense?—All his defence is at his own expense.

What other expense is the plaintiff put to after filing the declaration?—He has to reply to the plea, and then there is the record made up.

What is the expense of replying to the plea?—That depends again entirely upon the defence that the defendant may make, it is impossible to average it.

Does that depend upon the amount of the debt at all?—No.

What is the expense of the record?—The whole of those entirely depend upon the length of the proceedings; the record is not very long sometimes; I have no hesitation in expressing a very strong opinion, that the expense incurred in suing for debts under 15*l.* is a wicked expense.

Supposing the defendant does not resist, what is the expense the plaintiff is put to then, if he does not put in any plea?—He is put to no expense then, because the defendant pays the expenses.

Supposing the defendant is insolvent?—We charge the plaintiff two guineas and a half for the writ, and we charge him also for the declaration.

The expense of the writ being 2*l.* 12*s.* 6*d.* can you tell us how much of that sum arises from the expense of the stamps upon it?—I think it is thirteen or fourteen shillings, coupled with the fee of office.

Upon the declaration is there any stamp duty upon the paper or parchment?—Yes, there is.

For engrossing the declaration is there any thing more?—I will make out an account of the whole expense, which I will hand in.

What proportion of the writs that issue from the court of King's Bench, do you suppose, are for debts under 15*l.*?—On Lord Redesdale's Bill being brought in last year, I made some inquiries upon that head, of course they were only general inquiries:

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inquiries: it was said that the obstacle to that Bill was, that it would occasion a great defalcation in the revenue, in consequence of the greater part of the writs issued being for debts under 15*l.*

Can you inform the Committee what the proportion is?—I cannot, I have no idea at all.

Have you any idea what will be the best plan for the recovery of small debts?—I have not looked at the thing minutely enough for that: I looked at Lord Redesdale's Bill, I saw there was a great deal of it which appeared to be good; but at the same time there might be amendments in it; I think, with regard to the court of Westminster, that that might be materially improved, the Castle-street court.

What is the establishment of the court of requests, at Westminster?—It was established under the 23 Geo. 2. c. 22. and amended the next year; the commissioners are unpaid, and the extent to which debts may be recovered in that court is forty shillings

Are there any instances of the court not being able to sit for the want of commissioners?—I have never known it.

How many commissioners are there in the whole?—Two hundred and forty-two; there is a certain number for each parish, I have generally found that there are one or two commissioners that like the thing and attend constantly, and others drop in.

Has the high-bailiff any jurisdiction in this court?—All the processes are directed to him; every thing in fact is under his entire management, except the adjudication.

He has no jurisdiction in the court?—No. He is in Westminster, what the sheriff is in the county; he has the execution of the process; there are the same courts for the City and for Southwark, and those courts have within the last twenty years been extended to five pounds; about the year 1800 the courts were extended.

Are there any other courts of requests in the metropolis that have the power of hearing causes to a higher amount?—Not in Westminster, there is the county court, that goes only to forty shillings; and the city of London, Whitechapel, and the borough of Southwark, five pounds courts. I am not sure about the Tower Hamlets, whether that is confined to forty shillings or not.

When had the court of the city of London its powers extended to 5*l.*?—The 39 and 40 of George the Third.

What has been the increase of business in that court in consequence of that Act?—In the year 1799, being the year previous to the Act, the sum received into court was 2,424*l.*; and it has gradually gone on increasing till in the year 1818, which is the last year of which there has been a return made to the House of Commons; it amounted to 6,931*l.*

Is the city court constituted in the same way as the court of requests in Westminster?—I think not.

The money that is recovered in that court is not all returned; is not it occasionally paid into the plaintiff's hands, without going into the court?—I believe not.

Do you know whether that increase of the power of the city court has been of advantage to the trade of the city?—I have understood that it is of essential advantage.

Do you think that a similar increase to the power of the court of requests in Westminster, would be a similar advantage?—I have no doubt of it.

Have any particular grievances come under you notice?—I hear sad complaints from the tradesmen in Westminster when attending our burgess courts, and various other courts in Westminster; I hear sad complaints, particularly since the Insolvents Act passed.

Would the present constitution of the Westminster court of requests be a proper constitution for a court whose jurisdiction was increased to 15*l.*?—I should think not.

Why not?—I should think a jury must be introduced; it is very easy to settle a difference between two parties to the extent of forty shillings, and from the nature of the claims made there, there can be no doubt on which side justice is; but in a case of 15*l.* you must have a jury.

Would the appointment of a jury materially increase the expense?—Certainly; but I should think to the extent of 5*l.* the court might proceed with very little alteration.

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In what way do you think the institution of a jury would increase the expense?—Because the jury would expect to be paid.

Are you acquainted with the constitution of the court for the county of Middlesex?—No, I am not.

If the amount to be sued for was extended to 5*l.* would it be necessary to have any thing in the form of a declaration filed?—I should think not.

Would not it be possible to make a statement of the amount of the debt in the summons?—I should think it might.

Why do you think it would be necessary to file any thing in the form of a declaration, if the power of the court were extended to 15*l.*?—Then a greater field of claim is laid open than in cases of forty shillings.

Might not the claims be clearly explained without a declaration being filed?—I should think they might; I am not aware that the declaration explains the nature of the debt, except to the professional man; it rather confuses it, I should say, to the parties.

You conceive, however, that a court might be so constituted, as not very materially to increase the expense of the process, for the recovery of 15*l.* debts, although something more would be necessary, than in the case of forty shillings; you think the expense would not be proportionably increased?—Certainly.

Have you any knowledge of the court which sits at Hackney?—Not at all.

Supposing a jury were introduced into the court of requests at Westminster, would the present commissioners be qualified to act as judges?—It would alter the whole nature of the court completely; of course the Act of Parliament which introduced the jury, would direct, whether the present commissioners should act as judges or not.

Do you think they would be a description of persons, proper to act as judges?—Not in cases to the amount of 15*l.*

They are generally speaking, respectable tradesmen?—Certainly.

You think very likely, it would be necessary to constitute some paid commissioners?—I should think very likely.

But you do not think that that would be necessary, if the amount was only raised to 5*l.*?—I think not; I think it would be a great object to assimilate the Westminster court with the Southwark and City courts, to make them all 5*l.* courts.

When the court has decided upon the debt, what means are there of enforcing payment of it in the court of Westminster?—Either by seizing the goods or taking the person in default of payment.

That is by a writ directed to the high bailiff?—Yes, and all the present processes are without stamp, which is of material benefit.

For regulating the decision of cases between 5*l.* and 15*l.* you think it requires some further consideration, all that you have said applies to cases of 5*l.*?—The Westminster court or any particular court might be adapted to 5*l.* cases with very little trouble, but if applied to 15*l.* it would require a great deal of consideration.

Which should you say is the best of those courts with which you are acquainted for the recovery of 5*l.* debts?—I do not know, I have always thought the Westminster court a very good court, and a very just court, and I think there is great moderation shown in cases of actual distress.

Then the power of the court in awarding the mode of payment is quite discretionary?—Quite so.

Mr. *Thomas Phillips* called in, and Examined.

Mr. Thomas Phillips.

WHERE do you live?—At Monmouth.

What is your profession?—That of an attorney.

So far as your experience goes, what is your opinion of the present mode of recovering small debts?—It is extremely vexatious on account of the expense, and very injurious to both parties.

Will you state any cases that have come to your knowledge that specifically prove that?—I saw last Friday the under-sheriff of Monmouth county for last year, and he told me that bills of costs were sometimes taxed in the county court there, which amounted to 35*l.*

The amount to which the county court can go is forty shillings?—Yes, except by writ of justicies.

What is the expense of that?—I think it is fifteen or sixteen shillings, and the charges are afterwards all double. I have a letter from the under-sheriff of Rad

norshire,

norshire, who sent me this paper, which is an account of the expenses in the Radnorshire county court, sent by the clerk of the peace.

Mr. Thomas Phillips, (3 March.)

What is the amount of the action?—Under forty shillings.

[*The witness delivered in the account.*]

I have another from the deputy clerk of the peace for the county of Lancaster, in which he tells me, that the charges there in a case under forty shillings, are 6*l.* 9*s.* 3*d.* for the plaintiff, and 5*l.* 11*s.* for the defendant.

[*The witness delivered in the same.*]

I know of another instance, in which a man's cow and calf were sold for a debt of half-a-crown, the costs amounted to seven guineas and a half; that was in the county court of Monmouth.

Martis, 4° die Martii, 1823.

Lord Viscount ALTHORP in the Chair.

Mr. John Holmes called in, and Examined.

WHAT situation do you hold?—I am the principal, or first clerk of the court of requests for the city of London.

Mr. John Holmes. (4 March.)

Will you state the establishment of that court?—The court was created by act of common council, in the ninth year of the reign of Henry the Eighth; and in the first year of James the First, an Act of Parliament was passed for the more perfectly establishing the court, since which time several other acts have been obtained, but more particularly, an Act of the 39th and 40th of His late Majesty George the Third, whereby the jurisdiction of the court was increased, and the powers of the commissioners more fully defined, authorizing and directing them to make such orders and determinations between the parties, plaintiffs and defendants, touching debts not exceeding 5*l.* as they should find to stand with equity and good conscience.

Who acts as judge in that court?—All the commissioners are presumed to be judges, they have an equal authority.

Does any barrister sit in that court?—No.

What is the usual time that it takes to recover a contested debt?—It depends in a great measure on the opposition that is made to the recovery of that debt.

Will you state the process of recovering a debt in that court?—The process is, for the plaintiff to apply to the court for a summons, which is granted, upon the party stating the sum that is owing to him, and a summons is accordingly sent by one of the beadles; and is very prompt, for if the summons is applied for on the Monday or the Tuesday, the parties will have to appear on the Wednesday; and if it is applied for on the Thursday or Friday, the parties will have to appear on the Saturday; and if they do appear, the circumstances and the nature of the case are gone into immediately by the commissioners, they hear the plaintiff and the defendant, and then make an order accordingly; and it sometimes happens that the party who is summoned is not able to pay the debt and costs immediately, and in that case they inquire into his circumstances, and give him an opportunity of paying by instalments.

Will you state the process regularly; there is first the summons?—Yes.

And then the appearance?—Yes.

How often does the court sit?—All the year round.

How many days in the week?—Two, Wednesdays and Saturdays; I am there every day in the week.

In the summons, are the particulars of the debt stated?—Short particulars, as "debt for goods sold and delivered," or "money lent," so that the parties have an opportunity of knowing what they are summoned for.

Do any attornies or counsel ever plead in that court?—No, they are not allowed.

Of course a person may employ a friend when it is not convenient for him to attend himself?—He may employ a friend to state the inconvenience, and to pray another day for his attending himself.

Is it necessary for the plaintiff to apply in person for the summons?—By no means, any one may apply for him.

Mr. John Holmes.

(4 March.)

Is it necessary for the plaintiff to appear in person, at the time the commissioners decide upon the debt?—It is expected that he should, and without some reason to the contrary is given for his inability to attend the commissioners, they do not like to go into the cause, if it is opposed; but if it is a debt which is confessed, then there is not so much occasion for his personally attending; but in all cases even then they wish to see the parties.

When he does not attend from some cause which they judge sufficient, how do they prevent his attending by an attorney?—The commissioners object when an attorney appear, and postpone the cause till the next court day for the party to attend himself.

You said that, in some cases, they considered the excuse which the party made sufficient for his non-attendance?—In some cases.

In those cases, how do they prevent his employing an attorney?—I do not know that they can prevent his employing an attorney, but if an attorney appears they object to it.

Supposing a person to be bed-ridden and could not attend, and there seems no probability of his being able to attend for a considerable time, do they then receive another person to apply for him?—In that case certainly.

In those cases would they make any distinction as to whether the person was an attorney, or not?—They would prefer a person that was not an attorney.

Are there not, in your courts, persons that are pretty generally known by the name of Agents?—Very few, I do not know above two, and they are often prevented by the commissioners from appearing for the parties, and are objected against.

There are such persons?—There are, but they are not encouraged by the commissioners or by me.

The party can come before the court quite as well without employing an agent as if he did employ one?—Certainly, and it is better liked by the commissioners.

Who are the commissioners; by whom are they appointed?—They are appointed by the court of aldermen.

How are they named?—All the aldermen and all the deputies and common councilmen are commissioners, and the rest are made up of the principal inhabitants of each ward, many of whom are merchants who serve on special juries in the city of London.

Appointed by the court of aldermen?—Yes.

Every man attends or not, as he pleases?—Yes; there is no compulsion.

Have they any salary?—None whatever.

Have they any payment from fees?—None whatever.

It is entirely gratuitous?—Exactly so. I do not know whether I should not mention one circumstance, and that is, at the end of the month there is a sum of 10*l.* taken out of the fees, for a dinner, which the commissioners have, but which sum does not defray the whole expense of such dinner, the deficiency being made up among themselves; and that is all their remuneration.

Who do the fees go to?—All the fees are paid by me into the chamber of London, upon oath, and I account for those fees to a committee of the corporation twice a year.

Do they appropriate it to the general purposes of the city fund?—No, they appropriate it in this way; the clerks are paid, and the beadles and assistant beadles, and stationery, printing, &c. and all other expenses, are paid out of those fees.

Is there ever a surplus beyond that?—Yes.

A considerable one?—Not considerable.

Can you state, in a general way, what is done with that?—I cannot state that, because lately there has been sums of money taken out of the fees for the purpose of paying for repairs, as they took down the court of requests at Guildhall, and fitted up a house in Staining-lane, which created an expense, and then we were compelled to remove from that place into Aldermanbury, and which also created a further expense.

Before the occurrence of that extraordinary expense, what should you suppose was the common surplus?—Perhaps about 100*l.* a year.

Not more?—No.

That went into the general funds of the City?—No, none of the monies arising by the fees are carried to the general funds of the City, but a separate account of them is kept by the chamberlain, and they are applicable to defray the several expenses incident to the court.

Can

Mr. John Holmes. (4 March).

Can you tell us what the amount of this extraordinary expense was?—One expense was about 512*l.* the other expenses were, I believe, 200*l.* and upwards, but I am speaking now without book, I know they were considerable.

Any other sums?—I know there are other sums, but those sums never came under my cognizance; I only heard of them.

Those sums were derived from the fees over and above the expenses of the court?—Yes.

What is amount of the fees?—I have a table of the fees.

[*The witness delivered in the same, which was read as follows:*]

TABLE of FEES taken in the Court of Requests for the City of London.

CLERK'S FEES:

	s.	*d.*
Summons on debts under 20*s.*	1.	0.
Summons on debts of 20*s.* and under 40*s.*	1.	6.
Summons on debts above 40*s.*	3.	0.
Order and hearing in court under 5*s.*	no fee	
Order and hearing in court on debts of 5*s.* and under 40*s.*	1.	0.
Order and hearing in court above 40*s.*	2.	0.
Attachment under 40*s.*	2.	6.
Attachment above 40*s.*	3.	6.
Execution under 40*s.*	2.	6.
Execution above 40*s.*	3.	6.
Paying money into court on debts under 40*s.*	0.	6.
Paying money into court on debts above 40*s.*	1.	0.
Receiving money out of court on debts under 10*s.*	no fee	
Receiving money out of court on debts above 10*s.* and under 40*s.*	1.	0.
Receiving money out of court on debts above 40*s.*	2.	0.

No fees to be taken on re-hearings or adjournments of causes, for affidavits in court, nonsuits, certificates of orders made by the commissioners, searching the books of the court, nor for renewing attachments or executions, or for any other matter not specified in the above table of fees.

BEADLE'S FEES:

	s.	*d.*
Summoning each witness	0.	6.
Serving notice of attachment on defendant	1.	0.
Giving notice of such service to plaintiff	0.	6.
Levying executions on debts not exceeding 15*s.*	1.	0.
Above 15*s.* and not exceeding 20*s.*	1.	6.
Above 20*s.* and not exceeding 40*s.*	2.	6.
Above 40*s.* and not exceeding 60*s.*	3.	0.
Above 60*s.* and not exceeding 80*s.*	4.	0.
Above 80*s.*	5.	0.

All fees paid by plaintiffs and also the beadle's fees above-mentioned, for summoning witnesses, serving attachments, and levying executions, are to be allowed in the costs, to be recovered from the defendants, except the fees for receiving money out of court.

N. B.—Under the table of fees placed in the court, is the following notice, *viz.* "By Act of Parliament (24th. Geo. 2. c. 40. s. 12.) every debt or demand for "any spirituous liquors, unless of the amount of twenty shillings or upwards, and "contracted at one time, is declared not to be recoverable in law or equity."

How many commissioners have you generally in attendance?—Sometimes twelve or fourteen.

Are you ever stopped for want of commissioners?—Sometimes for half an hour or so, but in those cases we send the beadle round to the commissioners, requesting their attendance, which is always afforded.

Do you ever fail totally?—Never.

How many commissioners are necessary?—Seven for trying cases above 40*s.* and three under 40*s.*

Having stated the particulars of the fees, can you inform the committee what is

Mr. John Holmes.

(4 March.)

the average expense of trying a cause, taking those that are carried to the end and those where the money is paid at once?—No; I cannot at present.

What is the number of summonses that are entered in a year?—About 10,000.

What is the annual gross receipt of fees?—I will deliver in an account of the fees for the last four years.

[*It was delivered in, and read as follows:*]

Court of Requests for the City of London.

An Account of the FEES received in the above Court for the last four years, ending the 31st Dec. 1822.

	£.	s.	d.
Amount of the Fees received in the year 1819 - -	1,844	8	2
Do. — do. — do. — 1820 - -	1,788	6	4
Do. — do. — do. — 1821 - -	1,809	15	—
Do. — do. — do. — 1822 - -	1,879	17	3
Total amount of fees received -	£. 7,322	6	9

The fees are paid into the chamber of London by the principal clerk of the court, agreeably to an order of the corporation of London, and the clerks and officers, together with all expenses, are paid therefrom.

Do you account for those fees annually to the city of London?—I pay the whole into the chamber of London.

By what means are the expenses of the court defrayed?—Out of those fees.

They are paid by the city of London?—By the chamberlain.

To what account is the balance carried?—The balance remains in the chamber, except once in about three years, if there is a pretty good balance, gratuities are allowed to the clerks and officers; always retaining something of a balance to go on with.

Will you state what the salaries are?—The principal clerk has 500*l.* per annum; the first assistant clerk 200*l.* per annum; the second assistant clerk 150*l.* per annum; the third assistant clerk 100*l.* per annum; the four beadles 80*l.* per annum each; and the four assistant beadles 60*l.* per annum each.

Are those salaries paid by the city of London?—Yes, by the chamberlain.

What are the duties of the chief clerk?—The duties of the chief clerk are, to attend every day to issue summonses, to sign executions, to superintend the business of the court, and also to attend the commissioners while they are trying the causes, and to give such advice and assistance as he is able and is required to do. I am the principal clerk, and am an attorney, and have been so for many years.

Has the chief clerk any other advantage beyond his salary?—No other advantage, except 2*l.* 13*s.* 4*d.* which he receives for a livery, but that is not paid out of the fees.

Are you, as chief clerk, prevented from acting as an attorney?—I am not but in this way; all my time is so completely taken up in the business of the court, that I hardly do any business as an attorney, scarcely enough to pay for the certificate I am obliged to take out annually.

Is there any rule in the court to prevent the chief clerk practising as an attorney?—No rule whatever.

Then, in point of fact, clients of yours might appear before the court to claim their debts?—Yes, if I had any, but I do not attend to the business at all myself.

Are the second clerks attornies also?—No.

Are the indulgent judgments for paying by instalments very frequent?—Very frequent.

The rate is according to the proof of the circumstances of the party?—It is.

What is the smallest rate at which you have known a debt awarded to be paid?—I have known a debt to be paid at one shilling a month.

A debt of what amount?—Forty shillings.

How is that shilling a month paid?—Paid into the court.

Does the plaintiff think it worth while to come for it?—Yes; very often the debts are paid at two shillings a month.

Are you punctual in requiring the party to conform to those days?—Yes.

If he fails in his day, what is then done?—Then the plaintiff may take out execution.

Have you known such an application to be made?—Very often.

Have

Mr. John Holmes. (4 March.)

Have you not known, in such cases, a second examination of the circumstances, and a second indulgence given?—Never.

Are you quite sure of that?—Quite sure.

Do you happen to know that there often is a considerable balance left in court unclaimed by the plaintiff?—Yes, there is; and that balance is paid by me into the chamber, on oath.

That is sometimes considerable, is it not?—It is, but it is not always alike; I have paid money out of court that had been in it eighteen years.

What is finally done with that money?—It is paid into the chamber, and there it remains till it is called for. Within the twenty-seven years in which I have been the principal clerk, I have paid in about sixteen hundred pounds.

Have you any notion what may be in the chamber now?—No.

What makes you state sixteen hundred pounds, are you sure of that sum?—Yes, I think I am.

In the year 1799, the power of the court was extended to 5*l.*?—It was in the year 1800.

Was there much increase of business immediately upon that?—A great deal.

Of those sixteen hundred pounds that you paid in, how much has been paid since that time?—A great part of it.

Can you give the committee a return of what you have paid in each year lately?—Yes.

Of course the recovery of the debts is much more frequent than the loss of the money, that is, there are very few applicants that come into court that do not finally get their money; what should you say was the proportion of debts recovered?—Two thirds at least.

Has it ever occurred to you, what is the cause that so large a balance has been left in your court?—It arises, perhaps, from deaths, and persons forgetting it.

Is it from the great trouble they have in coming once a month, or once a fortnight, to claim those debts?—I am certain it is not on that account, because they have hardly any trouble at all.

What is the extent of the jurisdiction of that court?—The whole of the city of London.

Supposing persons come on behalf of those who are entitled to money, how do you ascertain that they are the proper persons?—We desire them to bring an order, in writing, from the plaintiff, and we pay them.

You make no difficulty about it?—No.

In case of children coming for instance?—Not children, without they bring an order, but we always pay the wives of the plaintiffs without any order in writing; in other cases, we require a written order from the plaintiff, signed by him or her.

Supposing that the plaintiff, after having recovered in your court, or rather, supposing the defendant, after the plaintiff has recovered in your court, goes into another jurisdiction, does the plaintiff pay any thing on suing out the proper notice?—He pays nothing to us, but we give him a certificate, and upon that certificate, he goes to the court belonging to the district to which the defendant has removed, and takes out what is called a fresh summons.

When your court has given a judgment, if the party against whom the judgment is given removes to another jurisdiction, do you send your process after him?—We do not.

Does the other party?—No.

Does he begin the process again?—Yes.

Supposing a man has obtained judgment in your court, and he finds afterwards that the party has removed to Westminster, or some other place, does your process follow him there?—Certainly not, we cannot follow him out of the City.

What do you do for him, do you give him a certificate that he has recovered judgment?—Yes; and state the expenses he has been at, and it is necessary that we should do so, because it may happen, that he has compounded with the creditor.

Do you happen to know whether the party, in that case, is obliged to go into the original proof of his debt again, or is it enough that he produces your judgment?—It is enough for him to produce our judgment.

Supposing a person removes into Westminster, who has had judgment against him for any sum between forty shillings and 5*l.* to what court does he go with your certificate?—He must go to the courts above.

Mr. John Holmes.

(4 March,)

In that case, he would have no relief from your certificate?—I do not know what the judge would do in such a case; I do not recollect any instance in which that has happened.

You mean by going to the courts above, that he must bring an action for the debt?—Yes.

Mr. John Gilbert Meymott called in, and Examined.

Mr. John Gilbert Meymott.

ARE you chief clerk of the court of requests in Southwark?—One of the chief clerks in the Southwark court of requests.

Will you state the establishment of the court of requests in Southwark, who are the officers in the court, and how is it constituted?—The court is constituted by three Acts of Parliament, the last of which is the 46 of George the Third.

What is the number of officers?—Two chief clerks and the high bailiff of Southwark.

Are the processes issued in his name?—No; he appoints the officers by whom the processes are served.

Are there commissioners?—Yes; there are 152 commissioners, who are appointed annually, at the vestries of the different parishes.

How many commissioners form a quorum?—Five upon debts above forty shillings, and three upon debts under forty shillings.

How many other clerks are there besides the two chief clerks?—Three under clerks, and sometimes an assistant.

Are the clerks paid by fixed salaries or by fees?—By fees only.

Have you a list of the officers employed in the court?—No, I have not. There are two chief clerks and three under ones, and the high bailiff receives fees out of the court equal to the two chief clerks, and sometimes more.

Have you a table of the fees?—Yes.

Will you state to the committee the process for recovering a debt in that court?—The first process is the summons.

What is the fee for that?—The total amount of the fee for the summons, is 1*s.* 8*d.*; of that, 8*d.* is paid to the two chief clerks, 4*d.* to the high bailiff, and 8*d.* to the officer for summoning, that is upon debts below forty shillings. The charge for the order is 2*s.* 3*d.* so that the whole expense of obtaining an order, for payment of forty shillings, is 3*s.* 11*d.*

What is the fee for a summons for debts above forty shillings?—Above forty shillings the fee is 3*s.* divided in the same way.

What is the next process?—If the party does not attend upon the summons, an attachment is then issued against him, or, in other words, a second summons; the increase upon that, for debts under forty shillings is 3*s.* making the total expense of an order on attachment, 6*s.* 11*d.* If the defendant does not pay pursuant to the order, an execution issues, for which there is a charge of 2*s.* 6*d.* The officers fee on forty shillings, is 2*s.* 6*d.*

Can you tell us the sum total of those charges, including the execution, supposing the debt is contested from the beginning to the end, including every expense?—The total of those charges for a debt of 40*s.* is 11*s.* 11*d.* There is also an expense for paying money into court, and taking it out of court.

What is that expense?—The custom in most cases is, to make an order for paying the money into court, by small instalments, generally of 4*s.* a month; there is a certain fee for paying the money into court, and also for taking it out of court; it may happen that the execution takes place without that expense: I will state the total of the costs, in a case, where the party suffers an attachment; hearing the summons is 1*s.* 8*d.* I am now taking all the expenses, and the order upon that hearing is 2*s.* 3*d.* the attachment is 3*s.* making a total of 6*s.* 11*d.*

Is not there sometimes more than one hearing?—Sometimes there is an adjourned hearing, for which there is an extraordinary fee of 1*s.* but that very seldom happens. The next thing is, supposing there is no payment into court at the proper time, and an execution is issued, there is a fee of 2*s.* 6*d.* for the execution; then there is to be added to that, a fee of 3*d.* on debts of 40*s.* and 6*d.* on debts above 40*s.* paid in the case of an attachment by the plaintiff himself to the officer for giving the plaintiff notice of that attachment, that he may have an opportunity of attending it; that is paid to the officer only, for it does not go to the clerks at all.

What

What is the whole amount of those?—11 *s.* 11 *d.* or 12 *s.* 5 *d.* with the addition of the 6 *d.*

Will you state the expenses in a case of a debt of 5 *l.*?—The costs of a summons and the hearing, without an attachment, are 7 *s.* 6 *d.*

What is the expense of the attachment?—Four shillings more, the execution is 3 *s.* 6 *d.* which in the other case was 2 *s.* 6 *d.* and the officers fees 5 *s.* and the notice to the plaintiff is 1 *s.* instead of 6 *d.*

What is the total?—1 *l.* 1 *s.*

Is all that charged as costs upon the defendant?—All, except the notice to the plaintiff of judgment.

Do the costs follow the suit as a matter of course, as they do in the courts above, or is that in the discretion of the commissioners?—It is in the discretion of the commissioners; but it is very seldom that they do not allow the costs to the plaintiff.

Something is paid into court upon giving judgment, does that fall upon the defendant?—Yes; and for every payment into court there is a separate fee.

What is that fee?—For the first payment into court, there is a fee of 1 *s.* but on none of the subsequent payments is there any fee; but on receiving money out of court, there is a separate fee for each time.

How much is that fee?—One shilling for a debt of 40 *s.* and 2 *s.* for a debt of 5 *l.*

Upon every receipt?—Upon every receipt out of court; therefore it is at the discretion of the plaintiff whether he will come every month to receive the money, or whether he will wait till the whole is paid.

In what way is the money kept until the plaintiff calls for it?—It is in the hands of the clerks, who give security to the commissioners for the amount, for which they account annually to the body of commissioners appointed by the Act of Parliament.

What proportion of the debts is ordered to be paid by instalments?—By far the larger proportion.

When that order has been made, is it strictly enforced?—The plaintiff has the power of issuing an execution if the instalments are not regularly paid.

Supposing a man fails in a day, is an execution immediately issued?—Yes; if it is applied for.

Do not the commissioners often interfere and grant a second indulgence?—No.

Suppose the plaintiff is not in the habit of coming every month; supposing, on the contrary, he chuses to wait a considerable time, and the defendant fails in paying his instalments, what notice is given to the plaintiff of that?—None.

Supposing the plaintiff comes to inquire whether it is paid in and does not take it out, has he any fee to pay?—There is a fee of 3 *d.* to pay for a search for a debt under 40 *s.* and 6 *d.* for a debt above 40 *s.* but I should state that the fee for a search is never taken but once, and then they may come as often as they please.

Does it often happen that there are adjourned hearings in those causes?—In a very small proportion, not one in twenty, perhaps not one in forty.

You always grant a re-hearing, supposing the defendant says he is not prepared with his evidence?—The court have it in their discretion to grant an adjournment.

Is it not a very frequent application in the other inferior courts?—I do not know.

Is the application frequently made in the court of Southwark for an adjourned hearing?—Not very frequently; on contested causes where it is necessary to produce evidence that is not produced at first, the court generally grant it.

Do they ever give more than one re-hearing?—I have known instances of two, but that is very rare indeed.

Have you ever known instances of more than two?—No.

Does not the court give a re-hearing, supposing the plaintiff appears by his wife or children?—If the thing is disputed by the defendant, it frequently happens that the plaintiff comes and says his debt is 40 *s.* the defendant disputes it, and he says I cannot prove it now, because I have not my books here, and in such cases they will often give an adjourned hearing.

Do they examine the parties on oath?—They have the power to do so, but they do not often do it.

Does the high bailiff preside, or does he merely receive the fees as being at the head of the jurisdiction of the borough of Southwark?—I do not know the reason; I should state that the fee for swearing the witnesses is never taken.

Have the commissioners any fees?—None.

Their services are entirely gratuitous?—Entirely.

Mr. John Gilbert Meymott.

(4 March.)

How many commissioners attend?—We have two sets of gentlemen attending at a time, and upon an average we have six or seven.

Are you ever put to a stop for want of the number?—We are occasionally.

Have you ever known the court fail for want of the number?—Yes; we have been obliged sometimes to postpone it.

Are there any means of compelling attendance?—No, I do not think there are any.

Do any attornies or counsel ever practise in that court?—Very seldom; I have known an instannce of a counsel attending.

For which side?—For the defendant.

Do the plaintiffs ever employ an attorney?—Very seldom indeed.

In a case in which the plaintiff did employ an attorney, would the costs of that attorney be allowed to him from the defendant?—No.

Have you any statement of the number of causes for any period of time?—I have a return which was presented to Parliament some time back, by order of the House of Commons, dated 21st March 1822.

[*The Witness delivered in the same; which was read as follows:*]

["A Return of the number of summonses issued from the court of requests, for the Borough of Southwark and East Half Hundred of Brixton, for the year ending December 31, 1821; distinguishing those under forty shillings, from those above that sum; also the number of attachments distinguished in the same way; likewise the number of searchers in the books, and the number of executions to forty shillings, as well as those above that sum; also how many persons were sent to prison in consequence thereof; and the number of executions returned not executed, mentioning the number paid when executed.

Number of summonses, not exceeding 40*s.*	10,051
Ditto - - ditto - - above that sum	3,331
Ditto attachments, not exceeding 40*s.*	1,623
Ditto - - ditto - - above that sum	683

The number of searches we cannot state, no register being kept of them.

Number of executions, not exceeding 40*s.*	2,872
Ditto - - ditto - - above that sum	1,375
Number of persons sent to prison in consequence thereof	830
Number of executions returned not executed	425
Number paid into court when executed	1,553

With respect to the number of persons sent to prison, and number of executions returned not executed, we have made the best return we are able from such warrants as are returned to us; and from them it also appears, that out of the above, 848 have been discharged by consent of the plaintiffs. And of the above number of summonses and attachments, 10,389 only have been heard and determined by the court, the remainder have been settled by the parties or otherwise, without going before the court, or any orders being made thereon.

17th April 1822. *Speck & Meymott*, Clerks."]

Have you any account of the fees in any year?—Yes; that was also returned to Parliament, there are several returns which have been made to Parliament; the first return was ordered on the 6th of July 1819, No. 562, that was an account of all sums of money paid into the court and taken out of court from the year 1798 to the year 1818, and the next was by order of the House of the 17th of October 1820, No. 318; that is a return of the fees that had been received for the six preceding years.

[*The witness read the same, as follows:*]

" Court of Requests, Southwark.

Mr. John Gilbert Meymott.

(4 March.)

RETURN of FEES received in the Court of Requests for the Town and Borough of Southwark, and Eastern Half of the Hundred of Brixton, in the county of Surrey, by Henry Smith Speck, and his late coadjutor Joseph Burnett, deceased, up to the 15th day of November 1815, and by the said Henry Smith Speck and John Gilbert Meymott, the present clerks, subsequent to that date.

1.	2. Aug. 1, 1813 to July 31, 1814.	3. Aug. 1, 1814 to July 31, 1815.	4. Aug. 1, 1815 to July 31, 1816.	5. Aug. 1, 1816 to July 31, 1817.
	£. s. d.	£. s. d.	£. s. d.	£. s. d.
Aggregate amount of fees received -	3,743. 17. 6.	3,567. 11. 4.	3,860. 9. 8.	4,255. 19. 0.
Fees on debts of 40*s.* and under, included in the above - - - -	2,144. 5. 7.	2,123. 10. 7.	2,119. 12. 4.	2,475. 0. 1.
Out of which has been paid, as follows:				
To the bailiff, his fees pursuant to the Act - - - - - - - -	749. 15. 2.	704. 18. 11.	832. 16. 6.	904. 6. 11.
To the bailiff's officers, their fees pursuant to the Act - - - -	514. 19. 4.	507. 15. 7.	360. 8. 2	567. 0. 2.
Annuities of 200*l.* each to four Marshalsea counsel (pursuant to the Act), rent, taxes, books, printing, stationery, salaries to under clerks, &c. &c. besides other miscellaneous expenditure - - -	942. 16. 5.	919. 9. 5.	998. 4. 10.	994. 12. 5.

6. Aug 1, 1817 to July 31, 1818.	7. Aug. 1, 1818 to July 31, 1819.	8. TOTAL.
£. s. d.	£. s. d.	£. s. d.
3,204. 5. 4.	3,536. 5. 9.	22,168. 8. 7.
1,941. 0. 6.	2,107. 3. 2.	12,910. 12. 3.
Out of which has been paid, as follows:		
£. s. d.	£. s. d.	£. s. d.
339. 12. 10.	372. 6. 11.	3,903. 17. 3.
232. 4. 9.	293. 12. 8.	2,476. 0. 8.
799. 10. 8.	868. 11. 7.	5,523. 5. 4.

We are unable to make any return of the fees received for the last two years preceding the Act of the 46th of his late Majesty, that Act having passed several years before either of us were in office, and neither of us having possession of, or access to, any books or papers from which such an account could be made out.

H. S. Speck.
J. G. Meymott. } Clerks to the court of requests for Southwark, and the Eastern half of the hundred of Brixton, in the county of Surrey.

Mr. John Gilbert Meymott.

(4 March.)

Are the chief clerks allowed to practise as attornies?—Yes; they are under no restraint, except from the great occupation of their time, we are engaged from half-past ten to four, twice a week.

Do you practise as an attorney?—Yes.

Supposing a defendant is removed out of the jurisdiction of this court, after judgment has been passed in the court, what remedy has the plaintiff against him to get his money?—He may, upon applying at our office, get a certificate, which he takes to the other court as a proof of his debt.

To what other court?—To the court belonging to the district to which he removes.

Supposing he removes into a district where there is no court for the recovery of small debts?—Then he must be left to his common law remedy, which is a very unfortunate one.

How far does the jurisdiction of this court extend?—It extends over the whole of the borough of Southwark, and over the whole of the Eastern half hundred of Brixton, the extent of which is Streatham, Tooting, and Clapham.

Do you think that there is any thing deficient in the constitution of this court, is it generally complained of, or does it generally give satisfaction?—I think I may say without hesitation, that our court in general gives very great satisfaction; the commissioners, in general, are a description of men who are very competent to discharge their duty, and the general oath of the parishes is to return men of substance; and as an inducement to them to attend regularly, a return is made of the number of times they attend, which is laid before the vestry.

You find it is an office rather desired than declined?—I think not; but there are some gentlemen, who are rather at leisure, who like it.

You are of opinion then, that generally the construction of the court gives satisfaction, and that it carries into effect the intention of Parliament in establishing it?—Exactly so; I hear sometimes of a few cases of dissatisfaction.

Do you think that the present constitution of the court in Southwark is such as would qualify it to take cognizance of sums to the amount of from five to fifteen pounds?—I should think there might be some little doubt about it. I think without the assistance of a barrister it would be scarcely sufficient; the gentlemen in general are intelligent men, but they are mostly tradesmen.

What do you think would be their feeling, if a barrister were to be attached to that court?—I think it would almost destroy their attendance; neither is it at all necessary in the cases that now come before the court.

Do you think that the present constitution of the court would be sufficient to qualify it to take cognizance of debts to the amount of ten pounds?—I should think it would.

Mr. Charles Cressall called in, and Examined.

Mr. Charles Cressall.

WHAT are you?—I am clerk of the Stepney and Hackney court of requests, and I keep the records of the court.

Will you state how that court is constituted; who are the officers of the court?—There are but three; the steward, the prothonotary, and an officer.

Who is the steward?—John Vaillant, esquire, one of the judges of the lord mayor's court.

Is he a barrister?—He is.

Is there a jury in the Hackney court?—We summon a jury occasionally, when the court sits; a jury is summoned upon the same principle as in the court of King's Bench.

Do you try all your causes by a jury?—All by a jury; but the prothonotary has the power of making an order when they are to make payments by instalments.

Is that court formed by Act of Parliament?—Yes.

By what Act?—The original was founded by a charter of Charles the Second.

To what amount of debt does the cognizance of that court extend?—From forty shillings to five pounds.

Do you try nothing under 40 *s.*—No.

What number does your jury consist of?—Twelve.

Has the prothonotary the right of making an order in disputed cases for summoning a jury?—He has.

Does he exercise the right?—He does; when the parties are summoned for a hearing, the prothonotary has the power of making a settlement between them.

Who is the prothonotary?—Mr. Farmer.

Is there no more than one clerk?—I am the only one.

Then

Mr. Charles Cressall.

(4 March.)

Then the court consists of three officers only?—Three officers only.

How often do you sit?—Upon an average once a month.

Not more?—Not more.

How many parishes are under your jurisdiction?—I do not know the number of parishes, it takes in a vast number; it begins at Whitechapel and goes all round to Bow, and then to Clapton, and Hackney, and Homerton, and Kingsland, and round to Whitechapel.

How many miles across is the district that it includes?—About fourteen or fifteen miles across.

How many miles round is the district?—between twenty and thirty miles.

How many causes do you try in a year?—The number last year 1822, was 653 causes from January to December, before a jury.

How many causes do you try in one day?—The highest number that have been tried in one day in the year 1822, is 63, in the course of twelve hours.

How many people do you summon for that jury?—Twenty-four, and w epick twelve of them.

Do you keep them the whole day?—Till the causes are finished.

Were all those 63 jury causes?—All jury causes.

All those are causes which your prothonotary has not been able to settle?—All disputed causes.

Do you mean by disputed causes, those which have been before the prothonotary and which he has not been able to settle?—Yes.

Have you any account of the number of causes that have been settled by the prothonotary in a year?—I have not brought that account, but I can furnish it.

Is the steward paid by salary or by fees?—He takes a third of the fees.

Do you know what the amount of the fees is in a year?—No.

Could you furnish that?—Yes.

Can you state how they are distributed?—No, I cannot.

You say the steward has a third, who has the other two thirds?—The prothonotary has a third, and the other third should go to four attornies, but the attornies have died, and none have been appointed in their place.

How are you paid?—I am paid by Mr. Farmer.

Out of the other third?—No.

What becomes of that third?—Mr. Farmer takes it as patentee; he owns the court as a freehold, by letters patent.

He pays your salary?—Yes.

What does he pay you?—50*l.* a year.

Will you state what the fees are?—The process for summonses is 4*s.* 6*d.* that is the first cost, if the defendant makes no appearance, the plaintiff then has what is called an interlocutory judgment, and the cost of that is 6*s.* 6*d.* appearing before the jury 3*s.*; and that is the whole of the cost up to filing the judgment.

Is there nothing paid by the plaintiff besides?—That is the whole of the plaintiff's costs; upon the defendant appearing and defending the action, it costs him 5*s.* 6*d.* but they very seldom defend their causes.

Are any attornies allowed to plead in the court?—No.

Do counsel ever attend?—No; because the steward has not the power of allowing them the costs.

Have the jurors any fees?—Two shillings on every cause.

Two shillings between the twelve?—Yes.

What are the description of jurymen that attend?—Respectable tradesmen, that rent a house of 40*l.* a year, not less.

Who makes out the list?—The officer.

Do not the people complain of this as a hard service?—Sometimes they do.

Have not you frequent applications from people to be struck off the list?—If they fail in their attendance, the steward has the power of fining them 20*s.*

Have not you frequent applications from people to be struck off the list?—Very often.

Do persons ever apply to you to be put on?—Never.

Do you ever find any difficulty in forming a jury?—Not in the least.

You only sit for one day in a month?—One day in a month.

If you have not got through the causes, do they stand over till the next sitting?—They must get through them, if they sit all night.

Who appoints the prothonotary?—The patentee; Mr. Farmer holds the patent, and he appoints himself; he is appointed patentee by the Act of Parliament.

Mr. Charles Cressall. (4 March.)

In the event of Mr. Farmer's decease, what would become of it?—He has the privilege of leaving it to whom he pleases; it is a freehold right.

Upon the whole, do you think the court answers the purpose for which it was instituted, do you have many complaints?—Very few complaints.

Is there a prison belonging to that court?—Yes, there is.

How many prisoners have you generally in the prison?—There is not one at present.

Generally speaking, how many are there?—We have not had more than seven at once.

After the verdict is given in your court, does the judge use his discretion as to allowing instalments?—The jury have that power.

When that is allowed, do the court see to the payment?—The man himself sees to the payment of it; and if he complains that it is not paid, an execution is granted to him.

Supposing the defendant goes out of your jurisdiction, how does the plaintiff recover his money then?—He is then obliged to sue in a fresh court; and a certificate from the prothonotary, empowers the commissioners to allow him the costs.

He sues upon your judgment?—Yes.

Without going through the proof of the debt again?—Yes.

Mr. Francis John Cater called in; and Examined.

Mr. Francis John Cater.

WHAT business are you in?—I am a hatter.

How long have you been in business?—About nineteen years.

What is your experience as to the mode of recovering small debts under 15*l.*?—I find a great difficulty in getting debts under 15*l.*; in fact the major part of my debts are under 15*l.*; five out of six are under 10*l.*

Are you frequently obliged to apply to legal process for the recovery of debts under 15*l.*?—Of late years I have hardly ever gone to law, I am very cautious now in trusting people, and I have been for some time; and I find it is throwing good money after bad to apply to solicitors or to take legal proceedings,

For a debt for a single hat for instance, which comes below forty shillings, did you ever apply to the smaller courts?—No, I never did.

Why do you not?—The gentlemen that will not pay for a single hat, if I was to serve them with a writ, they would be off; there are a great number of people that pass for gentlemen, who in fact are not so, but they meet with gentlemen at different places, and they come into a tradesman's shop and order hats and make use of gentlemen's names behind their backs.

Have you ever sued any body for a debt under 15*l.*?—I do not recollect that I have.

Is the aggregate amount of those debts very large?—No; I suppose about 4,000*l.* in debts below 10*l.*

Have you found that the arrest is an efficacious process for recovering your money?—I have hardly ever had recourse to it.

Do you mean to say that you find as much difficulty in recovering a debt above 15*l.* as you do in recovering a debt below that sum?—Yes, I do; because they are very desperate characters that I should arrest.

You say you are very cautious in trusting persons, what is the sort of caution that you use in trusting persons?—I ask him what time he will be at home, and he appoints a time, and the hat is sent at that time, and if the gentleman is not at home he brings the hat back again.

How is it that the debts are so very numerous in your books?—I lose a great deal by gentlemen in the army.

Supposing you had greater certainty of getting your money from your debtors, do not you think you should be able to charge your general customers much less for your goods?—I allow a discount.

That is upon ready money; but supposing it was possible for an Act of Parliament to pass, by which the means of tradesmen getting their money should be made much more secure, would not the customers generally get their goods at a cheaper rate?—I think it would be, but it is impossible to calculate upon that.

Veneris, 7° die Martii, 1823.

Lord Viscount ALTHORP in the Chair.

John Vaillant, Esq. called in, and Examined.

John Vaillant, Esq.

(7 March.)

ARE you the Judge of the Stepney and Hackney court?—Yes, I am.

Will you state how that court is constituted?—It is constituted under an Act of Parliament of late years; it was originally formed under a charter of Charles the Second, and the expenses became very large, too much so for the small debts that were recovered there; and in the year 1781, an Act of Parliament was passed for the purpose of limiting the fees, the 21 of George the Third, chapter 73, it was called "An Act for diminishing the Fees of the Court:" that Act of Parliament directs, that from that time, under that Act of Parliament, nothing but actions and suits for debts on assumpsits should be instituted, and it describes a very short mode of proceeding, and a very short mode of denying the debt. As it is at present in agitation to pass some general Act, the Committee will perhaps forgive me if I mention what I find an extreme inconvenience in that court, and which could very easily be obviated, which is this, the Act of Parliament directs that the debt to be recovered should be above forty shillings and under five pounds, now excluding forty shillings and excluding five pounds, creates a very great distress: the inferior courts, the courts of conscience, of which there is one within the same limits, will not hold plea in any suit which amounts to forty shillings, and if I did not allow a suit to be made for forty shillings and a farthing, a person whose debt is forty shillings would be entirely excluded from any benefit. With respect to five pounds, it is particularly hard, on account of the bank notes; I have had so many forgeries brought before me.

Do you try cases of forgery?—Yes.

What is the expense, in your court, of recovering a debt between forty shillings and five pounds?—The act of Parliament prescribes a table of fees; I perceive upon that, the plaintiff's costs are fourteen shillings, and the defendant's costs five and sixpence, and I think it amounts to four and sixpence and five shillings where the debt is confessed and it does not proceed to trial.

Who serves the summons in your court?—There is an officer who does that. I only go for the purpose of trying the causes; there is an officer, who is called the summoning officer, he is also the gaoler, he is one of the officers of the sheriff of Middlesex.

Does he receive any fee for executing the summons?—Yes; the fee is prescribed by Act of Parliament for subpœna and service, 1 *s.* 6 *d.*: for execution and service, 1 *s.*; and for summons and service, 2 *s.* 6 *d.*; but the prothonotary can explain those things better than I can.

Can you tell me what happens when the defendant goes out of the jurisdiction of your court?—I do not know at all. I do not know that any other court can take my judgments.

Are not you in the habit of giving certificates that judgments have been recovered?—I have never been asked for one, I should not refuse it if I were, but I never have done any thing of the sort.

Is your court a court of record?—Yes, it is.

Are there any improvements which you would suggest in the mode of transacting business in your court?—I am not aware that there is any in the mode of transacting business that would be at all useful, the great defect of the court is that which is very useful to the suitor, that the fees are so extremely low that the men cannot execute the process for it: the charges do come, on that account, a little higher than they are prescribed by Act of Parliament, but those extra costs cannot be charged upon the defendants.

Are you in the habit, when judgment is given for the plaintiff, of directing that the debt should be paid by instalments?—Yes; the Act of Parliament directs that the jury shall fix them.

Is there any limit to the time that may be given?—None at all.

What is the largest time you have known to be given?—There was an action brought in which I advised the jury as to the length of time they should give, which is the longest time which I have known to be given, it was a most cruel and iniquitous action, yet, in dry hard law, which I was bound to determine, the jury were bound to give a verdict for the plaintiff, they wished very much to find

John Vaillant, Esq.

(7 March.)

a verdict for the defendant, but I told them they were bound by their oath to find a verdict for the plaintiff; in consequence of that they made the debt, which I think was a debt of three or four pounds, payable by sixpence in a week, for the purpose of giving time.

Was the party in that case in very indigent circumstances?—The defendant was in extremely indigent circumstances. It was a debt, I think, that had been standing a great many years; the woman's husband had run away, and they proved that the husband had some time or other said that the debt was due, and so took it out of the statute of limitations, for I had directed that notice should be given whenever the statute of limitations was intended to be set up; but, in general, instalments are paid two shillings a week, or five shillings a month, and I find that the plaintiffs, in many cases, are extremely lenient, and frequently they come into court together, and say that they have agreed that the verdict should be entered for the sum, at four shillings or five shillings a month; the largest instalments at which they are ever paid, is half-a-guinea a week.

Is the strict condition of that indulgence, that if the man does not keep to the time punctually, he forfeits the benefit?—If he does not make the payment good, execution issues.

In those cases of indulgence, is there any sort of security taken that the party does not go out of the jurisdiction?—Not at all

Have not you frequently known it happen that before those instalments are completed, the party has gone out of the jurisdiction?—I dare say it has happened, but I do not remember any instance.

When your execution issues against a person, is there any limit by the Act of Parliament to the time for which you can imprison him?—A week for every twenty shillings.

Supposing the party is in for five pounds, at the end of five weeks you have no longer any authority over him?—Then he is discharged.

Is that a discharge of his debt?—Entirely so, it is in lieu of his debt.

The plaintiff could not sue again in any other court for it?—I believe not.

Do you mean that the five weeks imprisonment is a discharge of the debt?—The Act of Parliament says so.

What is your remuneration for your office?—All the fees that are received in the court, are directed by the Act to be divided into three portions; one portion of which the steward has, and I am called the steward, and of the other two-thirds, one of them was divided between the attornies of the court, at the time there were attornies, and the other third went to the prothonotary. There is now nothing for the attornies to do; there was, under the charter, a great deal to do, but there is now very little; and as the prothonotary performs all the necessary duty, I consider he is justly entitled to the remaining third.

What is the amount of your third of the fees?—It is certainly a situation which I should never have taken, except to oblige a friend. In the year 1798, which was the first year, the amount was 17 *l.* 15*s.* and there has been a gradual increase ever since. The sums in each year, since 1798, are as follow:

£. 18. 10. 0. —	£. 20. 16. 0. —	£. 24. 11. 0. —	£. 20. 2. 0.
23. 3. 0. —	29. 3. 0. —	41. 1. 0. —	37. 0. 0.
39. 1. 0. —	50. 12. 0. —	47. 8. 0. —	52. 3. 0.
65. 0. 0. —	69. 0. 0. —	83. 10. 0. —	80. 0. 0.
82. 14. 0. —	105. 11. 0. —	103. 7. 0. —	118. 0. 0.
124. 0. 0. —	129. 0. 0. —	126. 0. 0. —	128. 17. 0.

You sit once a month?—No, that is not the mode in which I sit. Mr. Ellis used to sit almost every week, he used to sit at eleven o'clock, and if there were only two causes he would come; then the jury were perpetually quarrelling with him; they would say, here are twenty-four of us to be summoned to wait for half an hour, and then to be dispersed again, to be perpetually summoned, and this is extremely inconvenient: I have insisted on the attendance of the jury; I said, I will be in the chair at ten o'clock in the morning, and I will, by degrees, see how many causes I can try in a day; and then I will give directions that I shall have a full paper of causes; and now the jury are very much pleased to come, for their fee amounts to two shillings on each cause. I do not sit above sometimes ten, sometimes eleven, and sometimes twelve times a year; they have a merry day of it, and generally they have a good dinner afterwards, and I find that we can go on with the business exceedingly well, and the suitors, I understand, are very well pleased.

You

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You try about fifty causes in a day?—More than that; I tried last year above 600 causes on the different sittings, and I find no difficulty in getting through that number, for a great many of them are judgments by default, and there are also a great many of them where the parties come together to settle.

What fine do you impose on the jury when they do not attend?—By Act of Parliament I am limited to twenty shillings, which twenty shillings goes to the London Hospital; and for contempt of court, the fine is limited to twenty shillings, which also goes to the London Hospital.

Is the sum that you receive exactly a third of the gross amount of fees?—The whole of the fees are stated in an account which Mr. Farmer gives me every half year, from which are deducted the expenses of the court, and two thirds of the remaining sum and what I receive is the balance upon that.

The committee wish to have the gross sum that has been levied in the court?—That Mr. Farmer can furnish.

[*Mr. Farmer was directed to furnish the same.*]

Mr. Thomas Butler called in, and Examined.

Mr. Thomas Butler.

WHERE do you live?—At Witham in Essex.

What experience have you had of the mode of recovering debts under 15*l.*?—I am in the general shop-keeping, and of course I have frequently had occasion to apply for the recovery of small debts; I know of no means of recovering them but through the county court, and that only extends to debts of 40*s.* I believe it must be under 40*s.*

Have you ever been put to any great expense in recovering a debt under 40*s.*?—Very great expense.

Can you state any instance of that?—There was one case, which was a very aggravated case, probably the committee will think it a very trifling one, but I was provoked against the man; it was for a debt of 2*s.* 9*d.* he had set me at defiance, then I said I would summons him, supposing that when he received the summons, he would see I was in earnest, and pay it, but he did not; of course I was obliged to apply for a distringas, and the expense of the summons, and the distringas, and the attorney's bill, came to very near forty shillings.

Were you obliged to employ an attorney?—Yes; for the fact is, I never could find any body that knew the constitution of our court, I have asked several of our attornies and they do not seem to know it.

What took place when you got a distringas?—Then the sheriff's officer came and levied, for which he had half a guinea.

What took place then?—He took their bed, and after I had done it, I did not like the thing, the consequence was, I told the man's wife that I would get the attorney to allow off as much as he could; he took off every thing that he could, I believe he lost money by the job; and I said I will pay every thing except 15*s.* if you will undertake to repay those 15*s.* you shall have your bed back; we did so, but I never got a farthing of that 15*s.* and if I attempt to get it, we shall have all those expenses over again; he was a man of very bad character, or else I should not have done it.

Do not you imagine that you were driven to this process by the general knowledge that people have of the difficulty that there is in recovering a debt in the county court, and that he presumed upon your not following up your action?—Most certainly; he as good as said it; I should observe likewise, that when the officer has seized the goods, they must lie in the hands of the sheriff till they decay, for we have no power to sell them, therefore both debtor and creditor are put to great inconnience and loss.

If the party pleases, is it not in his power to remove it to another court?—I believe so.

Have you ever been put to any extraordinary expense in recovering a debt between forty shillings and fifteen pounds?—Yes.

Will you state any circumstances?—I had to settle the affairs of a little shopkeeper in our neighbourhood, and there were a vast number of debts in their books, and I believe only two above 40*s.* one was for 9*l.* and the other was for 11*l.* I tried of course to collect the debts, but I find a great many of them would pay no attention to my application, I therefore put them into the hands of a Mr. Daniels, an attorney in that place, he wrote to them all, but they took no notice of it; I said "you must proceed, I do not expect to get any thing, but you must proceed for the

Mr. Thomas Butler.

(7 March.)

sake of warning these people against getting into debt;" he proceeded against those two parties in the court of Exchequer, as being the best and cheapest way of doing it; he got judgment against them, he took the person of one of them and sent him to gaol, the man never paid us a farthing, but got out under the Insolvent Debtors Act. I think the expenses in the two suits were about 32*l.* and some odd shillings; the other person was an old woman who was living upon an income she derived from some land in the parish; she would not pay; the sheriff's officer came to me and said, "the woman is ill, perhaps it will be thought harsh if I take her," I said, "no, do not touch her," and she has never paid a farthing. Mr. Daniels proceeded against several others in the county court, and after collecting all the debts that he could get, and making very moderate charges, as I believe he might have charged much more, he had a balance against us for 22*l.* some odd shillings, which we had to pay.

Is Mr. Daniels used to practising in the county court?—Yes; he did not conduct the trial himself, but he employed a very respectable attorney at Chelmsford.

Where is the county court held?—At Chelmsford.

How often?—I do not know; I never applied to an attorney to proceed in that way, but what they have complained and said they did not like it, but we must do it for you.

In what way do you mean?—By the county courts; our petition is signed by Mr. Daniels, and Mr. Pattison, who is the other attorney at Witham, told me he would sign it, but he was out of the way at the time, and he never has signed it.

As a tradesman, supposing no feelings of provocation exist from having been ill-treated, but regarding it merely as a question of prudence in point of money, should you think it worth your while to go to law for a debt of ten pounds?—Certainly not; it would be better under the present system, to lose the money at once.

Should you think it worth your while, if the mode of recovering small debts was much cheaper than it is at present?—In many cases I should, but I should look at the measure more as a preventive to people getting into debt: it would be of great service to us in that respect, if we had some cheaper and easier mode of recovering debts, and if the committee will allow me, I will state a circumstance which will support that opinion: I have a friend living at Ipswich, where there is a court of requests, he says he has lived there fifteen years, and he has never had occasion in any one instance, to apply to that court, and from that he infers, and I think very justly, that it is a preventive to their getting into debt.

Have you any doubt from your experience, that many people get into debt, speculating upon the difficulty of going to law with them?—I have no doubt of it.

Have you had any instances occur in which they have plainly told you so?—The man whom I mentioned, set me at defiance in a manner that amounted to that.

Is it usual to give credit generally speaking, under 40*s.* amongst the smaller tradesmen?—Amongst the smaller shops, it is very usual; I have advised them by all means not to do it, but they have an idea, that if the debt stands in the book it is as good as if they had the money, and the consequence is, that we very often feel the inconvenience of it, because they fail, and then we have to collect the debts.

Is it not very difficult to carry on business in the country without giving credit?—It is impossible, especially in a small town like ours.

For small debts under 40*s.*?—As it regards my own trade, it is more important to me to be able to collect sums between forty shillings and fifteen pounds, than larger sums.

In point of fact, it would be very inconvenient to labourers if they could not obtain credit from week to week?—In cases of illness and so on, they would be left destitute, if they could not obtain credit.

If you had a cheap and easy mode of recovering your debts, there would be no great inconvenience in it?—I think not; it would act as a preventive, they would not get into debt so much.

Do you happen to know whether there are any attornies employed in that court, of which you have spoken, or are the proceedings conducted by commissioners?—I understand there are a number of commissioners employed, who are qualified by possessing certain property.

Are any attornies allowed to practise in the court?—I believe not.

Is that a court of requests, does it extend above 20*s.*?—For sums under five pounds then they are left without any means of recovering the sums between five and fifteen; I knew another small shopkeeper some years back, who failed, and I felt the same

then

Mr. Thomas Butler. (7 March.)

then as I did in this, and I said to a young lawyer in our neighbourhood, a respectable man, " I have divided all the money I have, here are certain debts, if you think upon looking at them, they can be made to pay sufficient to cover your expenses, I wish by all means to prosecute them, to warn them against getting into debt;" he did so, and he had to pay a balance of 21 *l.* or 22 *l.*

Do you know of any small causes having been transferred to Westminster-hall?—No; I do not.

You do not conceive that there would be any difficulty in adapting the principles and rules of the county court to the district in which you live?—None at all.

It is a populous district, is it not?—It is an agricultural district, not so populous as the manufacturing districts.

Probably you know a great number of people who have given up their debts rather than sue in the county court?—I have given up a good many myself, and I know that a great many of the little shopkeepers have done so, and I have advised them to do so, because they would not be able to bear the expense.

Do you remember any case that you wish to mention?—There was one case where a person, an attorney, who moves in a respectable sphere of life, contracted a debt of 3 *l.* 15 *s.* with me; I applied for it at various times in the course of four years, and never could get either the money, or a promise of the money; I then desired my attorney to proceed against him; he did proceed, and the expenses were run up to upwards of 18 *l.* and then he thought it necessary to pay, as I should have had an execution in his house in a day or two.

Did he pay debt and costs?—He did; but if he had not paid it, it would have fallen very heavy upon me, and perhaps I ran more risk than was prudent.

Mr. James Nicholls called in, and Examined.

Mr. James Nicholls.

ARE you solicitor to the society for the relief of small debtors?—I am.

How long have you been so?—About ten years.

Where is that society held?—In Craven-street, in the Strand.

Does your holding this situation, give you a knowledge of the modes of recovering small debts?—It does.

What is your opinion of the present mode of recovering debts under 15 *l.*?—I think it too expensive.

Do you speak of suits in the King's court?—Speaking generally, except in the courts of conscience, as they are termed.

What is the usual expense of recovering a debt under 5 *l.* in the courts of Westmister-hall?—It varies considerably; I think the medium may be taken, where the judgment goes entirely by default, the defendant not appearing, at somewhere about 15 *l.* if he should appear and plead a dilatory plea, which is not an uncommon thing, it would then be increased to rather better than 20 *l.*; and if he should attempt to gain time, by a writ of error, which is also too common, it will then be 20 *l.* or 21 *l.* more, so that it would make the total expense 40 *l.* at least.

The expense you have now spoken of, is independent of the trial?—Yes.

These expenses apply as much to debts under 5 *l.* as to debts under 15 *l.*?—It does not depend on the amount of the debt; and where the defendant pleads issuably, there is a difficulty in saying what the expense may be.

What jurisdictions, for the recovery of small debts, are you acquainted with?—The County court, the court Baron, and the Hundred court, those are jurisdictions now almost fallen into disuse; the other courts are, City, Borough, and Town courts, those are local courts, and the jurisdiction limited; there are a few such courts as the Palace court, which extends over a larger space; and there are the courts of conscience, or courts of request, those are the chief courts throughout the kingdom, all of which are expensive, excepting the latter.

What is your opinion of the mode of recovering debts in the County court?—The County court not being a court of record, plea cannot be held therein for any thing due upon record, nor for any specialty debt, such as debt upon bond; the defendant must also reside, as well as the cause of action arise, within the county; and if the defendant happens to remove out of the county, the plaintiff is put to the expense of removing his cause.

Is not the record of the judgment in the County court, at all available in the court of King's Bench?—It can be removed into the court of King's Bench, but it then increases the expense to the parties.

The objections you stated to the County court are, that it is not a court of record,

Mr. James Nicholls. (7 March.)

cord, and that it is limited in its jurisdiction, what other objections have you to the proceedings in the County court?—That the cause of action must not only arise within the jurisdiction of the County court, but the defendant must also reside within that jurisdiction; and, therefore, it is frequently rendered very difficult for a tradesman to recover at all; supposing, for instance, he lives in London, and supplies a man resident in Surrey, specialty contract debts, however small, cannot be recovered in those courts.

Supposing you made the County court a court of record, would that remedy the evil you last spoke of?—It would, certainly remedy that evil.

Is there an appeal from the County court to any higher court?—Plaints may be removed into the courts of King's Bench and Common Pleas, by the writ of *recordari facias loquelam.*

Are you acquainted with the proceedings of the county court of Middlesex?—No; that is something like a court of request, I never had any thing to do with it.

You mentioned also the court Baron, what do you know of the proceedings in a court Baron?—There are only a few instances, I believe, where those courts now exercise the jurisdiction.

Where are they?—There is one at Beverley, which has a prison belonging to it, called Beverley-hall-garth; there is also one near Leominster; a question, in Lord Kenyon's time, arose, whether the steward of that court could hold a common law court Baron, without two free suitors, which was determined in the negative; there is a court near Preston also, and some others, I believe, but I cannot charge my memory where situate.

What is your opinion of the mode of recovering debts, in what are commonly called courts of request, and as an example, take the court constituted in that form, the Westminster court of requests, in Castle-street?—My opinion is, that although they may answer very well under 40*s.* I do not think they ought to go beyond that amount; and, perhaps, even there it infringes on the trial by jury; my chief objection is, that the parties who try the questions, are not competent to determine on the law as well as the fact, and they frequently determine cases, which I think ought not to be so determined; for instance, a publican sues a poor man for a sum under 40*s.* where spirituous liquors form a portion; yet the commissioners, who are generally persons in the same class of life, as the creditor, award him his demand; it seems to me that publicans' scores ought not to be encouraged, they frequently tend to the ruin of the labouring man and family; and yet the commissioners wholly disregard the statute law, otherwise the publicans' claim would often very properly be defeated, where spirituous liquors formed a portion of his demand.

Is there any Act of Parliament of that kind?—Yes; 24 G. 2 c. 40. In Burnyeat *v.* Hutchinson, 5 Barnewall and Alderson, the court of King's Bench, upon a motion to increase a verdict, held that a plaintiff was not entitled to recover for spirituous liquors, supplied in less quantities than to the value of 20*s.*; and it was said in the argument, that any security given for a tavern bill, in which there was a charge for a glass of spirits, would be invalid.

You mean then to say, that from the persons who filled the situations of both judges and jury in these courts of requests being tradesmen, they show too great a partiality to credit a tradesmen in their decisions?—I think so.

Have they not usually a clerk to advise them on the law of their proceedings?—They usually have.

Is not that clerk generally a practising attorney?—Yes.

Do you apprehend, that any inconvenience arises from that circumstance?—Not at all.

Do you see any objection to their being advised, as to the law of the case, by their clerk?—No, I see no objection to their being advised, but I understand they pay little attention to his advice; indeed, I know one instance, where the commissioners did not pay any attention to the advice of the clerk; it was the case of an administratrix; the whole of the property had been administered, she was summoned for a sum under 5*l.* by one of the commissioners of the court of requests, in Southwark; an application was made to me, I recommended her to appear and inform the commissioners she had no assets, and that they had no jurisdiction in such a case; the creditor, who was also a commissioner, left his seat and went round as the claimant, his brother commissioners heard the case, and contrary to the recommendation of the clerk, made an order to pay the demand: I waited upon the clerk and told him, if the order made was attempted to be enforced, an action would be brought

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(7 March.)

brought against the parties, levying an execution; further proceedings were threatened, but nothing done.

Did they over-rule that woman's plea, as a plea that was not available in point of law?—Yes.

Do you remember any other instance?—This would not have come under my immediate knowledge, if I had not happened to be concerned for the estate of the deceased.

Then, in fact, the opinion you give against the practise of courts of requests, does not proceed from your own personal knowledge, but rather from hearsay?—Rather from hearsay, certainly; I have heard of many instances.

You do not exactly know the ground upon which they rejected that woman's defence, whether they doubted the fact or not?—Whether they did or did not doubt the fact of assets would be quite immaterial, inasmuch as they had no jurisdiction in the case at all; the Act of Parliament founding the court, excepts cases of this nature.

Do not the commissioners take an oath to administer to the best of their judgment and belief upon the evidence?—I believe they do; but the great objection is their determining the law as well as the fact.

With the exception of that instance which you mention of the ignorance of certain commissioners, with respect to an Act of Parliament relative to selling spirituous liquors, you do conceive it possible that a question of law could very often intervene in those cases, or is it very frequently the case?—I should think a day seldom passes where a question of law does not, or rather might not, arise upon the statute of frauds.

Are you acquainted with the mode of proceeding in the court at Guildhall?—I am not. As to expenses in borough and city courts, which I ought to have alluded to before; I beg to say, there were two cases came before the committee of the society on Wednesday last, one from Colchester, of the name of Daniel Harvey; the debt was 19*s.* 6*d.* the costs 9*l.* 15*s.* 8*d.*; the other from Tiverton, of the name of John Holmes; the debt 6*l.* costs 4*l.* 2*s.* 10*d.* In a report of a committee of the House of Commons in 1792, on the practice and effects of imprisonment for debt, there are some cases which give a general idea of the expense of causes in the borough and city courts, from which Report, with permission, I will read an extract.

[*Read as follows:*]

"William Taylor, whose original debt was 6*l.* 6*s.* and the costs 12*l.* 4*s.* John Mackay, whose original debt was 26*l.* and costs 30*l.* William Coverley, whose original debt was 12*l.* and costs 28*l.* Andrew Chisholm, whose original debt was 1*l.* 1*s.* and costs 4*l.* 9*s.* 10*d.* Thomas Smith, whose original debt was 2*l.* 6*s.* and costs 6*l.* 8*s.* William Stevens, whose original debt was 4*l.* and costs 10*l.* 18*s.* 10*d.* William Haynes, whose original debt was 1*l.* 19*s.* and costs 5*l.* 17*s.* John Ayston, whose original debt was 2*l.* 3*s.* 11*d.* and costs 14*l.* 18*s.* being six times the original debt. William Wootefield, whose original debt was 14*s.* and costs 6*l.* 16*s.* 10*d.* being nine times the original debt; and Matthew Robinson, whose original debt was 1*l.* 19*s.* and costs 33*l.* being fifteen times the original debt."

You have stated what you conceive to be the inconveniences of several of those courts, have you ever turned in your mind what improvements could be made to render a court for the recovery of small debts, a useful court?—Yes; I should not think it necessary to interfere with any of the existing courts, but establish a court in each county for the recovery of debts under 15*l.* at a small expense, leaving the creditor to make his election in which court he would sue. The court and officers might consist of a judge (a barrister), a chief clerk, and assistant clerks; the office of the court to be fixed in such situation as might appear most convenient for correspondence, by post, with the rest of the county.—The proceedings might be, a summons giving 21 days notice to the defendant to appear and plead, and, in default of pleading, judgment to be entered for the plaintiff for the amount of the sum mentioned in the summons.—Summonses only to issue on the plaintiff filing an affidavit, that the sum claimed is justly due, and to which affidavit should be annexed the particulars of the demand.—If the defendant thought fit to plead, he should annex to his plea an affidavit negativing the plaintiff's claim wholly, or in part, as he might think fit; if he claimed a set-off, the particulars thereof should be annexed to and verified as just, by the affidavit. If he admitted himself liable in part, but disputed the remainder, he should pay the sum admitted and costs into court, that the

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plaintiff might accept the same in discharge of his demand, if minded so to do.—I conceive that by putting the plaintiff's and the defendant's case in writing and on oath, the cases to be tried would be comparatively few, and therefore, if the judge should take a circuit of the county once in four months, for the trial of causes, it would be quite sufficient, and the cases would be so few, that those arising in two or three hundreds of the county, might be taken together, without delay or inconvenience, at some central spot, for the convenience of the suitors and witnesses.—The expenses, in case of judgment by default, need not exceed 10*s.* and in cases of trial, from 20*s.* to 30*s.*—I should propose to pay the judge and officers out of the county rates, the fees to go in aid thereof, which fees would be more than equal to the support of a respectable court.

Would there be any difficulty in finding barristers to sit as judges in all the different counties in England?—I should apprehend there would be none; we have no difficulty in finding a barrister for a commission of bankruptcy in any county.

When you say that the judge would be paid by the county rates, what salaries do you propose?—That would depend very much upon the quantity of business he might have.

Do not you think there would be sufficient from the fees of the court?—My objection to paying the judge out of the fees of the court is very great, it is much better that he should have a fixed salary, and that the fees should be paid to the county.

In the plan you have stated, do you mean to apply it to all debts, of whatever amount, under 15*l.*?—Yes.

Then you would do away with the operation of even those courts of request, which at present exist?—No; I would not do away with the jurisdiction of any court, but leave the plaintiff to make his election.

Then you would have the court to apply to debts under 40*s.* as well as to debts above 40*s.*?—Yes.

You said, that the office should be fixed; in your plan, do you think it would be sufficient in a large county to have only one office for such a court?—If there were more than one office, a greater number of officers would be required, and thus increase the expense, as I think, uselessly.

In the case of the county of York, do you think one office would be sufficient?—I should divide the county of York into the West and East Ridings.

But in the case of the West Riding of Yorkshire, would it not be very inconvenient, if there was only one office to which people could come, for the recovery of their debts?—I have considered that, and in the way in which I have put it, I think it would not be necessary for the parties themselves to attend at all, because, I have said they must file an affidavit of the debt being due.

Do you think there is no objection to parties making an affidavit in their own case?—I do conceive there is a very great objection to a party making an affidavit in his own case, and to recover upon that oath only; but my proposition is, that it should be the ground work of a summons, and that the defendant should then, if he pleases, on oath, deny the justice of the claim, or if he declined to do so, then judgment might go for the amount sworn to by the plaintiff, which would obviate the necessity of a writ of inquiry of damages.

You said, that the defendant should make an affidavit in defence, would you make the falsehood of that affidavit subject to the penalties of perjury?—Certainly; if willfully and corruptly false; my object is, to prevent a multiplicity of trials, I think in ninety-nine cases out of a hundred, causes ought not to be tried that are now.

Do you mean, that parties should come to a composition, previous to a trial?—I mean, that a man should not defend a case, without a real ground of defence; that he should not vexatiously defend a cause merely for delay.

Supposing a plaintiff, in a distant part of the county, wishes to obtain a summons, is he to get that by post by sending his affidavit?—He must send an affidavit by some person, who will apply to the officer for it.

How is that application to be made?—Printed forms might be kept, and the oath taken before a magistrate, or a commissioner of some of the superior courts.

Then he might be able to receive it by post?—He might receive the summons by post, which he might serve either himself, or by some other person.

Would you allow attornies or counsel to practise in the court?—If the parties thought fit to have their assistance at their own expense, not otherwise. The expense should not be charged as costs between party and party.

Do

Do not you think, that allowing counsel, would delay the proceedings extremely?—Not at all.

Mr. James Nicholls. (7 March.)

Do you conceive, that any inconvenience arises in the court of Westminster, or any of the small courts, from parties appearing by their agents?—I do not know any thing of those courts.

You stated, that one of the great objections you felt was, that a publican will allow a man to run up a greater score than he ought to do, might not that be guarded against, by a clause in an Act of Parliament, for recovering above a certain amount, being as much as a man requires for his family for a week, or even a shorter period?—Certainly.

Your society is in the habit, before they administer relief, of inquiring into the circumstances?—Yes.

Does that devolve upon you?—No; upon the secretary.

Do you happen to know, whether the general result of their experience is, that there is great harshness exercised towards poor persons in the recovery of small debts?—It is.

Does that society carry on its operations to any considerable extent?—It relieves persons throughout England and Wales; the average number relieved, has exceeded one thousand debtors per annum, for the last fourteen years.

Has the number been lessened since the passing of the late Insolvent Act; what has been the effect of that Act upon the proceedings of the society?—There have been fewer compositions applied for.

Do you find that they take the relief of the Act, instead of applying to the society?—Yes; I will hand in an account of the number relieved by the society.

[*The witness delivered in the same.*]

Mr. Abraham Lancaster called in, and Examined.

WHERE do you live?—At Stratford, in Essex.

What is your business?—That of a linen draper.

Mr. Abraham Lancaster. (7 March.)

What experience have you had of the mode of recovering small debts?—I have had very little experience of it, for I really am so fearful of making use of the present law, that I lose my debts rather than have recourse to it; I know that many of my neighbours have suffered exceedingly by it; a levy of distress was made upon a neighbour of mine a few days ago, the amount of which was 1 *l.* 14*s.* for a debt of 1 *l.* 7*s.*

Was that in the county court?—It was.

Have your neighbours had a meeting in consequence of this difficulty?—Yes, we have; I have got a copy of the resolutions of the committee, who sat upon that subject.

[*The witness delivered in the same.*]

Do the tradesmen in your neighbourhood, generally, feel the necessity of having a cheap mode of recovering small debts?—They feel it very much.

Is the distance of the county court from where you live, a considerable objection to it?—That is one objection, but it is not the principal objection, there is no necessity for the person to attend there himself.

What is the principal objection to it?—The expense is a great objection; but the principal objection is, that the defendant can be very much annoyed by the process of that court, but the plaintiff cannot be benefited in any degree by it, because he can only procure goods for the payment of his debt, and those goods cannot be sold; the goods lie and perish, and we cannot avail ourselves of turning them into money

Are the goods ever got out?—I never heard of an instance; there have been instances in which warrants for restitution have been issued, and the goods have been recovered, but upon what grounds I do not exactly know.

Recovered by the defendant?—Yes.

Is not the distringas renewed from month to month, until the debt is paid?—It can be; the expense upon every distringas is 1 *l.* I understand, but in some instances the charge is but 10*s.*

Have you ever considered the means by which the present state of the law might be remedied?—That has been thought of, but no particular measure has been proposed.

Are tradesmen in the country under the necessity of giving credit for small sums?—There are many businesses in which it is absolutely impossible to avoid giving credit, and even we shopkeepers find it next to impossible, to avoid it, we are all obliged

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(7 March.)

obliged to live by the good will of our neighbours, and if we were not to accommodate them by giving credit, and very often we cannot do it with safety, we should get that ill-will, which would be very detrimental to our trade.

That was the opinion of a very large meeting at Stratford?—It was the inhabitant's opinion.

Are there not many tradesmen who are not so cautious as they ought to be in giving credit?—I should apprehend there are.

You have no doubt of it, have you?—I have no doubt there are many instances of that.

You know that many respectable tradesmen have reason to complain, that there are tradesmen who are much too easy in giving credit?—I do not hear of those cases.

Do not you find a run of one tradesman against another, by giving credit?—By under-selling, not by giving credit; we are peculiarly circumstanced in our place, we have no court of requests, and the county court being so distant, is extremely inconvenient.

Supposing a man comes into your shop, and ask for an article, are you not in the habit of asking him for the money?—We should not trust them, unless they are well known to us, if they are strangers to us we should not.

But if a poor neighbour of your's, was to come into your shop, and was to wish to take away goods without paying for them, you would run a chance of losing him as a customer if you refused to let him have them?—We should certainly run the chance of loosing him.

Supposing a well-dressed person comes and orders goods home, and upon their being sent, you find there is the appearance of a substantial house, and so forth, you are not then in a hurry to receive the money?—Unless we knew more than that, we should not be inclined to leave the goods without being paid for.

Does not the general custom of tradesmen make it in fact almost a matter of necessity to give credit?—It is; so many of the most repectable gentlemen in our neighbourhood are in the habit of taking credit.

What credit are you in the habit of giving to the inferior class of your customers, for what length of time?—If they are very poor we give no credit at all.

But were you do give credit with those of your debtors who are in your books for sums under 40*s.* for what length of time are you in the habit of giving them credit?—We have no specific time; if it is not paid in two or three months, we generally ask for the money.

Do you know of any other association of tradesmen, besides that you have mentioned, for the purpose of effecting a cheaper mode for recovering small debts?—Petitions are coming to the House of commons from many parts of Sussex, and from Hinckley, and I will beg leave to read one of their resolutions, which is as follow: "That it appears the populous hundred of Sparkenhoe, as well as divers other extensive trading places in this county, are labouring under much inconvenience, for want of some efficient means for the recovery of small debts; that the county court of Leicester, and the other court there, are ineffectual even to recover a debt under 40*s.* for the same not being courts of record, they cannot sell goods or effects, unless an appearance be entered by the defendant, and a regular judgment obtained before a jury, which incurs much expense and delay, and ultimately the law is so frequently baffled by the defendant ceasing to keep house, that thereby the plaintiff generally loses his debt, and consequently has the expenses to pay, amounting to from five to ten pounds."

Have you ever, on pressing any of your debtors to pay, been told by them, that you might get your debt as you could?—Frequently; a person told me a few days ago, that he was set at defiance by his debtor; he said that he might get it as he could, for he knew he had no means of recovery, and he might do his best and his worst.

Mr. William Inglish called in, and Examined.

Mr. Widliam Inglish.

YOU live at Bolton-le-Moor?—I do.

What is your profession?—Independent.

What is your experience of the mode of recovering small debts?—I will take the liberty of laying some observations before the committee, which are founded upon actual experience; and before I came away, there was a meeting of many of the principal shopkeepers, supporting these observations, as to the great loss they suffer in collecting their small debts; and, therefore, the impossibility of doing it.

[*The witness delivered in the same.*]

Do the people at Bolton apply to the county court, which sits at Preston?—It does not now sit at Preston; within a short time it has been removed to Manchester, the justice's court, I believe, sits at Preston still. *Mr. William English.* (7 March.)

It was only removed to Manchester last year, was it?—Yes.

It does not sit at Manchester all the year?—Once a month.

How often does it sit at Preston?—Once a month at Preston.

How far is Bolton from Manchester?—Eleven miles.

How far is it from Preston?—Twenty miles.

Is it necessary to sue out a writ of justicies, to recover a debt above 40*s.*?—It was, till lately; I believe last year the court was extended to 10*l.*; there was a petition presented last year on that subject.

Was that a petition to increase the powers of the county court?—To extend the sum, I believe, of the county court.

Was not it to extend the sum of the court for the hundred of Sawbridge?—Yes it was; it is an actual fact, that I attempted to see that petition, and could not see it. There is a committee now sitting, to oppose any measure that may be brought forward by this committee.

Of whom does that committee consist?—Of lawyers.

What is the expense of prosecuting a suit for a debt in the county court of Lancaster, generally speaking?—For a debt of one shilling, a contest will cost 14*l.* or 15*l.* and there is no other means whatever.

Does that expense arise from the distance of carrying the witnesses, or from what cause?—I have here a printed list of the court fees, printed by authority of the court; it contains also the establishment of the court, and the practice of the county court.

[*The witness delivered in the same.*

What is the usual expense which is required in suing for a debt of 5*l.* when it is not resisted?—That will appear by the table of fees.

Lunæ, 10° *die Martii*, 1823.

Lord Viscount ALTHORP in the Chair.

Mr. James Daniels called in, and Examined.

WHAT are you?—An attorney. *Mr. James Daniels.* (10 March.)

Where do you practise?—At Witham in Essex.

Have you been in the habit of suing parties in the county court of Essex?—I have done so occasionally.

Can you point out to the committee, what are the defects in that jurisdiction?—I am not sufficiently acquainted with it to speak to the defects; I have taken some pains to ascertain the mode of proceeding, but I never could; I waited on Messrs. Jepp and Perkins, who are the conductors of the court, for information on the subject some time ago.

What are they?—Attornies.

They act for the county clerk?—Yes.

Have you found the proceeding by the county court expensive?—Very much so, and very ill calculated to answer the purpose.

In what has the expense principally consisted?—Perhaps I had better state the mode of proceedings; first we write to Jepp and Perkins for a summons, which is served on that party, and we then return the summons, with a note of service indorsed upon it; if the party does not appear upon that, he then issues a distringas, upon which he is directed to levy to the amount of 40*s.*; I should state, that where the party does appear, we have generally found it advisable to drop the proceeding altogether; because when he appears, the expenses are so extremely heavy; when the party does not appear, the distringas issues, which is directed to the sheriff's officer, he is commanded to levy to the amount of 40*s.* for that I believe his fee is half a guinea, exclusively of any journey which he may have to take.

Is that the fee you have paid?—I have paid half a guinea; and I believe it is more when the distance is greater; I live within eight miles of Chelmsford.

What takes place after the distringas?—Those goods are taken by the sheriff's officer, and I understand from him, that he has a number of rooms full of those goods which he has taken, because they are not saleable.

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Then supposing the party does not pay the debt?—Then we issue a second distringas, which goes through the same process.

What is the interval between those two writs of distringas?—I believe there is no stated interval, the sheriff makes his return.

At what time is the writ returnable?—I do not know: I should state that Messrs. Jepp and Perkins told me, that if I found the first distringas did not answer my purpose, they would hardly recommend me to go any farther.

You have now stated the process when the defendant does not appear, will you state the course of proceeding when he does?—I never of my own knowledge met with an instance in which he did appear.

Have you ever recovered any debt in that court?—I believe I have some two or three; I believe I never received any money from the sheriff's officer when I have recovered a debt, it has been before issuing the distringas.

Have you often recovered upon the summons?—I do not engage in it except for regular clients; we generally refuse it.

Do you generally recover the money?—I do not suppose I ever recovered half a dozen debts in my life.

Is it generally among the profession reckoned an efficient court?—No; quite the contrary.

Have you recovered in the largest proportion of cases in which you have sued?—Certainly not; it is so inefficient a court, that we generally consider it derogatory to practise in it at all.

Have you in your neighbourhood any other court for the recovery of small debts?—None whatever.

Do you know of any in the county of Essex?—In the borough of Colchester I believe there is a borough court, but that is confined exclusively to that borough; and I believe both parties must reside there, and the debt must be contracted in the borough.

Did you ever sue in the Colchester court?—Never; I was articled in Colchester, which gave me an opportunity of seeing a little of it.

Did the practice appear to you to be fair and effective?—I think so; but I was young at that time, I am not prepared to complain of it; I have hitherto been speaking of debts under 40*s.*

What do you do in cases of debts above 40*s.*?—Then we sue in the courts above.

By a writ of justicies?—No.

Could you honestly advise a client of your's to sue for any debt under 10*l.*?—Not at all; I have put down on paper a few cases which I will beg leave to mention to the Committee; one case was Ong against Inching, the debt was 9*l.* the costs amounted to 14*l.* 15*s.* 10*d.* he took the benefit of the Insolvent Act, and we never recovered a shilling; I beg leave to state that the proceedings were of such a description, as to lessen the expense as much as possible; had we adopted any other process, the costs would have been 20*l.* at least instead of 14*l.*; the next case I will mention, is a proceeding by the same plaintiff against a man of the name of Sidley, the debt was 11*l.* 14*s.* 3*d.* and the costs 16*l.* 19*s.* 4*d.* of that not a shilling was ever recovered.

In both those cases judgment went by default?—Yes; then in another action of Low against Smith, the debt was for 6*l.* and the costs in that case amounted to 25*l.* 11*s.* 1*d.*

How came the costs to so much?—I cannot exactly recollect the circumstances.

Was there a sham plea?—I think there was; I will take the liberty of stating, that in consequence of having received an order to attend here, I spoke to one or two friends, to get at the proportion of their bills, in small debts; and I will particularly mention to the committee, a surgeon in Witham who assured me that three-fourths of his bills consisted of debts under 10*l.* and I could say that within the last twelve months, at least a dozen cases have occurred in which I have been applied to, my answer has been, I will give them a letter, and if that does not answer the purpose, I would not advise you to proceed any further.

Mr. Edward Randall called in, and Examined.

Mr. Edward Randall.

YOU are an attorney at Cambridge?—I am.

Have you turned your attention to the mode of recovering small debts?—Yes, I certainly have; some years back there was a considerable increase of actions in our county court, and I had some applications that certainly did excite my attention

and

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and led me to consider that the practice that was going on was a great evil, and I did mention it to some persons of consequence, and those of the magistracy that I happened to be acquainted with, and I once had an interview with Lord Hardwicke, who paid some attention to the subject; and there was a meeting at Cambridge in consequence of the proceedings that had been represented to some of the magistrates, and indeed they were well known to some of the magistrates, as happening immediately in their districts.

Have you ever been in the practice of suing persons in the county court at Cambridge, for small debts?—I have not myself, for I have purposely declined that kind of practice, and I never attended to it but when I have been applied to by persons who had been summoned, and then my attention has been occasionally called to it.

Summoned in the county court?—Yes.

Do you know the mode of practice in the county court at Cambridge?—I do pretty well.

Will you state it?—The party is first summoned, and then, if he attends to that summons and enters an appearance, the regular process is, that a declaration is prepared and filed and the plea put in.

In the regular form of special pleading?—Yes; in short I may say, in a few words, that it is nearly the same course of proceeding as in the superior courts; but, having said that, I would beg to return to the first proceeding, just to point out to the committee something that appears to me material in that;—it is well known that those debts are very small, and in some instances that have occurred to me, they have not been more than seven or nine shillings, now the practice has been, which is an abuse that struck me, and called my attention to it, summonses are often served on the very morning, or, perhaps, sometimes it may happen the day before the county court is held; if the county court is held on the Thursday, perhaps the summons will be served on the Wednesday, but often I think it has occurred, that it has been served on the same morning; the person of course is a peasant, and it often happens that he is a poor person, perhaps if the summons is left at his house and his wife cannot read, no notice is taken of it; I do not know any instances in which this has happened, but I mention it merely as what may probably occur; it may happen that the wife does not see her husband till night, and he therefore knows nothing about it, and in short, through their not being able to read, and not knowing the nature of those proceedings, no notice is taken. The next process where no notice is taken of the summons, is a distringas, and that is attended, I believe, with an expense of sixteen shillings at least, then the goods and chattels of the party may, in that case, be distrained, that is for contempt; that is not an absolute distringas entitling them immediately to sell, but it is a process for contempt, and they have proceedings to take; to remove that contempt they have a motion to make in court, and other proceedings, all which are necessarily attended with some expense, and that I take to have given rise to more hardship than any thing else; it may be said that it was an inattention in the party, but where persons have very small incomes, perhaps only five or six shillings a week, it cannot much be wondered at that they should be inattentive to a process of law which they, perhaps, cannot read, and the nature of which they do not understand. Then there is another thing, the purport of the summons is, that they shall appear at the county court; now the county courts are not always held at any public place, they have been often held at the private office of the under sheriff, and therefore a poor man has very great difficulty in finding it, and he takes the thing literally; by appearance, he understands being there in person; they have often come to me, and said, where must I go to; I have directed them to the court, if it was right that they should appear, but often I have told them that they had better settle the matter at once.

Do you apprehend that it would be an improvement upon that process, if it was necessary that the summons should be served a certain number of days before the appearance?—I think it would be a most material thing, that if the summons was a simple demand of the debt, stating, you are required to pay a certain sum, say into the hands of the under sheriff, if it is to be in the county court, in a few words, and if that was served any certain number of days before the appearance that was thought right, say fourteen days for instance, and then a notification, that if they disobeyed they would be distrained upon; it seems to me that would be a most material improvement, and one that would remove the evil that has been complained of.

You stated that in the case of a distringas for contempt of court there is no power of selling, do you mean that goods are ever sold that have been distrained in the

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county court?—Yes; but that is after other proceedings; ultimately they can get the power of selling.

Are you sure they have any power of selling?—I doubted it myself, formerly, but I know it has been done in our county, they proceed then to declare and go through the regular proceedings and get judgment, the expenses then run up to seven pounds and more.

Upon a debt of a few shillings?—I can state some instances of expenses, I believe, quite accurately.

In the county court you mean?—I am speaking of the county court entirely.

You stated that there had been a great increase in the number of actions in the county court, when did that increase take place?—Within the period of about ten years; previous to 1815, the average number of actions was 82.

How did you ascertain that?—From inspecting the sheriff's books, where all the summonses are entered, and in the eight years subsequent to 1815, the average number of actions is 450 at least.

To what do you attribute that increase?—In the year 1815, there were 280 actions brought; in the year 1816, there were 450; in the year 1817, there were 750; in the year 1818, there were 560; in the year 1819, there were 360; in the year 1820, there were 490; in the year 1821, there were 412; and in the year 1822, there were 540.

To what do you attribute this great increase in the business of the county court?—I really think it must have been an industrious seeking out of occasions to bring actions, for they have been brought by a few persons who have gone into that line of practice.

Was there any change in the officer who managed the business of the county court at that time?—I believe there was; it had a long time been in most respectable hands, but I do not think that that change could account for it, for it went into hands that, if they were not equally respectable, were not at all amiss; it was a long time in the hands of the clerk of the peace at Cambridge.

Has the court been in the same hands since the year 1815, as before that time?—I think it changed hands since the year 1815; I think about the year 1816 or 1817.

Do you know of any professional men who began to practise about that time, and to whose practice you should attribute this increase of suits?—I am not able to state the number; if I had observed the entries, so as to be able to do that, I should have had no objection to answer the question, but it could be ascertained. I think there are three persons that have brought a great number of actions.

Do you think it is owing to the distresses of the times?—I can hardly think that.

You say that the court has been conducted by the same persons since the year 1815?—No; I think the office of county clerk had been a long time in the hands of the gentleman who is clerk of the peace, and he did all that was possible to check all that was amiss in it; since 1815, it has changed several times, it has generally now been in the appointment of the under sheriff.

The sheriff appoints both the under sheriff and the county clerk?—The under sheriff appoints the county clerk.

Have the under sheriff and the county clerk, been the same person?—No; it happened that Mr. Pemberton was frequently under sheriff; and, therefore, he had an opportunity of paying a more strict and constant attention to the matter.

Do you know whether the debts have been frequently recovered upon those actions in the county court?—I know the expenses of several of them, but I do not know exactly the result; there was one in the year 1819, Unwin against Hart, the debt was 6*s.* 9*d.* and the costs were nine pounds.

Did you defend that action?—No, I did not.

Was that case tried?—That was tried.

Who presides in the court?—The county clerk.

Is the trial by jury?—By jury of twelve persons.

In that case you have mentioned, where the costs amounted to nine pounds, might not a great part of that bill of costs consist of the expense of witnesses coming from a distant part of the country?—I am not able to state how that was.

Of course they allow the expense of witnesses in the costs?—Certainly they would; but those small actions are not very complicated.

Are they in the habit of examining parties on oath, in the county court, do they allow of that?—I believe not.

Are not you under a mistake, in saying, that the summons can be served on the day

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day on which the party is to appear?—No, I think I am quite sure that has been done.

Before a distringas issues, must not there be an affidavit of the service?—No; that is another evil attending the county court; the summons is entered, and that I think is the only proof, and I believe that is taken as a sufficient proof of the summons having been served, its being entered in the sheriff's book.

Is there a return by the bailiff?—No affidavit, I think.

Have they any affidavits at all?—I think not.

Do you know whether they ever proceed, by writ of justicies, in the county court of Cambridge, for debts above 40*s.*?—I believe not.

Who enters the summons in the book?—The plaintiff's attorney.

What does he enter?—Merely the names of the parties, and that he has served a summons; the summons is under the seal of the court.

The entry in the book is what you call a plaint?—Yes.

That is the foundation of the suit?—It is.

Upon that the summons issues?—Yes.

Then what record is there of the service of that summons?—I think I can venture to say there is none.

The distringas issues, as of course, upon the application of the plaintiff's attorney?—I believe so.

Have you ever known actions in the county court, against parties residing at a distance from the county town?—Yes I, have; a few have come to my own knowledge, and doubtless there have been many.

What is the cost of the summons?—It is five and sixpence, I believe.

Have you a bill of costs with you?—Yes, I have.

[*The witness produced the same.*]

What do you pay the county clerk?—One shilling.

What is the attorney's charge?—Five and sixpence.

Will you state the different fees for a distringas?—The attorney's charge four and sixpence.

What is the amount paid to the county clerk?—Fourpence; the declaration, I believe, is charged much after the manner of common law proceedings, so much for every seventy-two words, the mere entry is not above a sixpence or a shilling.

Are there stamps on those proceedings, as there are in the courts above?—The stamps are small.

Are they upon the number of words, as they are in the courts above?—Yes; for a rule to plead, if he does not plead, the attorney would charge about five and sixpence, and the mere entry of it in the book, would be about sixpence; for a subpœna, the fee paid to the county clerk, would be about one and eightpence, and the attorney would charge four and sixpence.

You mean the subpœna for witnesses?—Yes; then the defendant's attorney charges for entering an appearance, two and fourpence, that is the allowed charge, and the fee paid to the clerk for the entry, is fourpence, those are some of the material charges.

What fee is paid to the jury on the trial?—I do not know exactly, it is very small, I believe.

You have been stating these hardships and difficulties as it respects the debtor, do you find the process at all more efficacious for the plaintiff?—Not a bit, I think.

He complains of it equally with the other party?—I believe that to be the reason, why many persons do not use the court, it certainly is the reason, why I have not myself.

Are the respectable men in the profession, in the habit of practising in that court if they can avoid it?—No, they are not.

Have you any other local jurisdiction for the recovery of small debts in Cambridgeshire, that you know of?—At Ely there is.

Do you know any thing of the practice of that court?—I cannot say, I do.

Is there any court of requests in the town of Cambridge?—I believe not; but the corporation have the power of arresting for debt.

Have they a court of their own?—They have, for debts arising within the borough.

To any amount?—Yes.

Are suits ever brought in that court?—There are.

Do you know any thing of the practice of that court?—The practice is much like the courts above, in point of form.

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Who presides there?—The mayor.

Is the trial by jury?—Yes.

Is it more expeditious than the courts above?—Yes.

How often are the courts held?—I think they hold one, once a month.

Is the proceeding expensive?—The arrest is much the same; but I believe the proceedings throughout are not so expensive.

That also originates by plaint, does not it?—The writs are issued under the seal of the mayor.

Is it a court of record?—I think it is a court of record, and they proceed much in the same way there, only under the authority of the borough, as we proceed in the superior courts.

As it is a cheaper mode of proceeding than the superior courts, how comes it not to have a greater practice?—I really am not able to answer that.

Is it confined to debts arising within the borough?—Yes.

And both the parties must reside within the town?—I believe so.

Is it unlimited as to amount?—It is.

Is it of very old existence?—Very old.

Do you know any thing of the University court, do they ever hold a court for debt?—They have a court where cognizance is claimed.

Then they do not hold any court, except on claim of cognizance?—I think not in pleas of debt at all.

This jurisdiction of the borough, is not exclusive of the county court, even where the matter is such as would come within their jurisdiction?—No, I believe not.

When the debt does arise within the borough, and the parties reside within the borough, still the parties would not be excluded from the county court?—I believe not.

Do you apprehend from the consideration you have given to the subject, that there would be any way of dispensing with the declaration?—I should think so for small debts, I see no use of it at all in small debts.

Would it be possible to state the grounds of the debt in the summons?—I think so, it is well known that in the proceedings in the superior court by original, the ground of action is stated in the first process, its being at length is not a matter of necessity, as it appears to me, and as this would be confined to debts, and would therefore have no reference to other causes, it strikes me that it would be very possible to dispense with the declaration.

Do you think, if the process of the county court was corrected in the points you have stated, if the abuses you mention of the summons were removed, and if they had the power of selling the goods when they were levied, and in other respects the process was corrected, that it might be made an efficient court for the recovery of small debts?—I think so, indeed.

There is no objection to it's present constitution as to the persons before whom it is held, and the manner in which the trials are conducted?—Not at all; I would beg leave just to observe as to the person before whom it is held, that it has not a constant character, it must depend upon the attention of the under-sheriff; to that business therefore one cannot answer that so, without qualifying it.

You think it would be better if there was a judge permanently appointed?—Yes; if for instance such a person as the sheriff could attend and use his influence in the proceedings.

Have you any provincial barristers resident in Cambridge?—Yes, we have.

Have you any doubt that a gentleman of that description might find it worth his while for a moderate salary, to give his attention to the duties of such a court?—I think such an one would be found.

You think that would be an improvement in the court?—I should think so indeed; it need not alter the constitution of the court.

Does the clerk direct the jury as to the law in the trials?—He certainly does give directions; all appeals are made to him as to the law; that I am able to speak to, because I once attended the county clerk on a point of form.

He is usually a practising attorney?—He is usually, he is generally the under-sheriff.

Have you ever heard the county clerk explain to the jury what the law was upon any point?—No; I cannot say that I have.

You have not had much practice in the county court, have you?—No, I have not.

Mr. John Hodgson called in, and Examined.

Mr. John Hodgson.

(10 March.)

WHAT are you?—A solicitor.

Where do you live?—At No. 4, Argyle-street.

Do you know any thing of the court of requests at Westminster?—I am one of the clerks; there are two clerks.

State what is the constitution of the court of requests at Westminster?—Our court is constituted by an Act of the 23d of George the Second, and the business is done by a certain number of commissioners, 242 in the whole, assisted by the two clerks and deputy clerks and other officers.

What is the mode of proceeding?—The first proceeding is a summons, upon that if the parties both attend, the cause is heard, and decision is made, and there is an end of it.

The case is decided by a majority of commissioners?—By a majority of the commissioners.

How many commissioners must attend?—Three.

That is the least?—Yes.

How many, in point of fact, generally do attend?—We generally have twice as many, or three times as many as that, sometimes, we have always a sufficiency of commissioners.

How are the commissioners appointed?—They are appointed by the parish vestries, I believe; we have two court houses, and one of them is for one set of parishes and the other for the remainder, and the commissioners are appointed in the vestries of those respective parishes, and I believe the gentlemen of the vestry appoint them according to their attendance; we put down their names when they attend, and those who attend most frequently are generally re-appointed. The next proceeding, in case the defendant does not attend upon the summons, is an order which we call an order nisi.

Will you state the fee for the summons, and the fee for the order?—The fee for the summons is eightpence.

What is the fee for the order nisi?—The fees for the order, supposing there is an order, is fifteen pence, but before the order, if the parties attend, comes the hearing, and then there is no order; the charge for the hearing is 2*s.* 2*d.*

After the order nisi, what takes place then?—Then the cause is heard if the parties attend, in the same way as it would have been upon the summons, but with the increased expense of the order.

It is not always settled upon that first hearing, is it?—If the parties wish, from defective evidence, for further time, to postpone it till the next week, they have the liberty of doing so, for which there is a fee of seventeen pence, and we very often do it without the fee, where it seems a deserving case, and often we take no fees at all.

If they do not attend, what then?—If they do not attend upon the order nisi, we then take judgment by default, and the execution issues by order of the commissioners.

Have you any affidavit of the service of that order nisi, before you go to judgment?—We require the proof of the officers.

On oath, or merely their statement?—On oath.

Is that the case also with the summons?—We always ascertain before the execution issues, that the summons has been served.

How do you ascertain it?—We never take an oath of the service of the summons, but we do of the service of the order.

Is the summons always served by an officer of the court?—Very often, and most commonly the plaintiffs serve it themselves.

Does that save expense?—No; the fact is, that the high bailiff and the clerks pay the officers.

Do you require the oath of the plaintiff that the summons has been served?—Unless it is so perfectly clear that there is no necessity for proof, it rests entirely with the commissioners, the clerks are only there for the purpose of directing the commissioners where there may be points of law, for our commissioners are men who either have been in trade and have retired from business, or are actually in trade; they perfectly understand the nature of the demands that are made by the plaintiffs, and our interference is quite unnecessary, except on legal points.

What is the lowest amount of expense, at which a debt can be recovered in your court?—Two and ten-pence; the summons is eightpence, and the hearing two and twopence.

Mr. John Hodgson.
(10 March.)

What is the highest that you have known?—Supposing the defendant to have neglected the proceedings, and not to have attended at all, the highest expense I think is 6*s.* 7*d.*; I have here a paper, containing the amount of our fees, the summons is eightpence, the hearing 2*s.* 2*d.* the order nisi 1*s.* 3*d.* and the execution 2*s.* 6*d.* making a total of 6*s.* 7*d.*

Does it not often occur, that the defendant is not prepared with all the evidence he wants?—It does sometimes happen, then it is postponed, and we very often do not take the fee; indeed, I think, if our books were examined, it would be found, that they are oftener postponed without any fee than with, for we have the liberty of remitting the fees in all cases.

Are there many causes that are settled upon the summons, without any further proceedings?—A great many; I suppose out of all the summonses that are issued, not near two-thirds come into court.

Have you any account of the number of summonses issued in any time?—No, I have not; I think we issue in the course of the year, in the two courts, somewhere about 15,000, and I should think, that of those 15,000, we try not quite 10,000.

To what amount of debt does your jurisdiction extend?—To 40*s.*

Have you the power of selling goods taken under an execution?—Yes.

What power have you of imprisoning the person, for how long a time?—For a debt under 20*s.* twenty days, and for 40*s.* forty days.

Supposing that imprisonnent is suffered, does that go in satisfaction of the debt?—It does.

Have you many imprisonments in execution?—We have, sometimes, a good many, lately we have not had so many.

Has the high bailiff any portion of the fees?—He has; the return which I have delivered in, shows what portion he has.

If the man appears upon the summons, then the whole expense is 2*s.* 10*d.*?—The whole expense then is 2*s.* 10*d.* unless it is dismissed; if it is dismissed, it is then only seventeenpence, the eightpence is for the summons; if he gains his cause he pays 2*s.* 2*d.* in addition to the eightpence; if he loses it, he pays seventeen pence, but if he recovers his money of course he receives the costs.

The court have the power of giving payment by instalments?—Yes, they constantly do.

What is the lowest rate at which they have been paid?—We have had them as low as sixpence a week, but where the people are poor, they generally ask for about a shilling a week.

Do not you generally find that the parties leave your jurisdiction before the debts are paid?—Very often they do; but we find sometimes such cases of distress, that it is impossible for them to pay quicker; they most commonly pay, and if they do go out of the jurisdiction, they are followed by a certificate from our court, which enables them to get the debt in a very speedy manner.

Supposing the defendant goes out of your jurisdiction, and into a place where there is no court of requests, what remedy has the plaintiff?—He has no remedy then but to proceed at common law; but those cases are very rare indeed; we have very frequently certificates from the county court, and from other courts of request, upon which we act.

Do you make any charge on giving a certificate?—No.

Does it ever happen that there is money left in the hands of the court not claimed by the plaintiffs?—I believe some years ago there was to a very small amount, but now we have none; we have been called upon to repay debts, paid in, in the times of the former clerks, and we have paid more than we have received.

There is no remuneration for the commissioners?—None.

What do you suppose is the inducement to gentlemen to attend?—I think no other inducement than that of performing a public duty; I am not aware of any other.

Is your's an exclusive jurisdiction?—It is confined to those parishes which return the commissioners.

Does it exclude the county court?—Yes, we have nothing to do with the county court.

May they sue in the county court for debts arising in Westminster?—No; at least they may plead our act in abatement.

If a party sues in a court above, and does not recover above 40*s.* they are liable to costs, on suggestion of your Act?—They are.

Mercurii, 12° *die Martii*, 1823.

Lord Viscount ALTHORP, in the Chair.

Mr. Thomas Phillips called in; and further Examined.

Mr. Thomas Phillips. (12 March.)

WERE you ever under sheriff of the county of Monmouth?—I have been twice, in the year 1792, and in the year 1795.

What experience have you had in taxing bills of costs in the county court?—I taxed a bill in an action in which there was a set-off, the verdict was for sixpence, and the costs were taxed at 20 *l.*

Where is the county court of Monmouth held?—The county court of Monmouth is held alternately at Monmouth town and Newport town, which are twenty-five miles apart.

Is that productive of any inconvenience?—It must of necessity, for the parties have to travel all across the county.

And their witnesses also?—Yes.

In the case to which you just now referred, do you recollect whether any considerable part of the expenses were for witnesses?—I believe there was.

Is it the practice of the different county courts in Wales, generally to sit at different towns?—No, I believe not.

What is the course of proceeding in the county courts in Wales?—A summons is served on the party at the suit of the plaintiff; if the defendant does not appear he incurs contempt, for which a distringas issues against him to compel appearance, which distringas is discharged upon payment of 6*s.* 8*d.*

If there is no appearance, then is there another distringas?—Yes, *ad infinitum*; when the appearance is entered the cause proceeds; and I will deliver in a bill of costs which I once received from a person who practises in the court.

Is it much the custom in Wales to sue out writs of justicies?—Yes, frequently; the practice is to restrain them to debts of 10 *l.* for this reason, that the profit is greater afterwards in a superior court; but I was informed by Mr. Blick an eminent special pleader in the Temple, that the county court can entertain jurisdiction to the amount of 40 *l.* but it is not the custom so to do.

Is it more profitable to the attorney to sue in the county court by writ of justicies under 10 *l.* than to sue in the great session?—I do not know the comparative charges, the great session does not extend to the county of Monmouth.

Is the process of suing a defendant by writ of justicies in the county court under 10 *l.* more profitable to the attorney, than suing in the courts above?—I think he finds it answer better, because he has nothing to pay to any body; but in the court above he has to pay the agent half his fees.

Monmouthshire is an English county, is it not?—It is; it never was subject to Welsh jurisdiction.

What regulations do you think would improve the practice in the county court? There are many regulations introduced in a printed bill, presented to the House of Commons the year before last, which I think would be highly useful, and would regulate the county courts extremely well. It appears to me that the county court as it is already practising and existing, may be regulated in the form prescribed by that bill, without introducing the preliminary part of the bill, which alters in some degree the constitution of the court, by appointing a new judge; there would be considerable opposition, as I understand, raised to the appointment of the judge, on account of the expense, but until that could be arranged in some manner or other, the proceedings in all inferior courts may be regulated with great advantage in the way proposed upon those pages which I have before me, until a more efficient judge than the under sheriff is appointed to superintend.

What objection should you have to there being a more efficient judge appointed immediately?—None, except that the county would not concur in the expense, and they would oppose the bill on that ground, there is no other difficulty than that; I have made much inquiry of the gentlemen holding efficient situations in Westminster Hall, and they certainly will do all that they can to oppose any measure which tends to deprive them of part of their business.

Are you acquainted with the mode of proceeding in the county courts in Wales?—No, I never sue there.

Veneris, 14° *die Martii*, 1823.

Lord Viscount ALTHORP, in the Chair.

George Heath, Esquire, called in; and Examined.

George Heath, Esq. (14 March.)

YOU are county clerk of Middlesex?—I am.

What is the nature of the county court of Middlesex as at present constituted?—It is a court to recover debts under 40 *s.* in which the county clerk presides, and proceeds by a summary process, under the Act of the 23d of George 2, in lieu of the old county court process.

Who are the judges in that court?—The county clerk and his deputy; the county clerk must be a barrister of three years standing, and has the power, under the Act to appoint a deputy, who also must be a barrister of three years standing; the county clerk is appointed by the sheriff of Middlesex and approved by the chancellor and one chief justice, or by the two chief justices at the time of his appointment.

What does he individually decide upon in the court?—He sits as judge in the court, examining the parties and witnesses, and summing up the evidence to the suitors who form the jury.

Who decide upon the fact?—The jury.

What does the jury consist of?—Twelve men are returned by the sheriff of Middlesex for each month, from the list of jurymen that is used upon the trials in the King's Bench and Common Pleas at Westminster.

How many of them constitute a jury?—Three sit to constitute the jury of the day.

Could there be less than three?—I will not say; there cannot be less by law, because I believe two form a homage jury, they are called by this Act suitors, because they sit as a homage, under this Act, in the place of suitors.

Are this jury, which you describe, obliged to be unanimous in their decision?—There can be no doubt, from the words of the Act, that unanimity is not necessary, and also that there is no separation in the words of the Act between the jury and the county clerk, who may vote with the jury; but practically there is, and as far as I am able to learn, always has been the same distinction between the county clerk presiding as judge, and the jury, as in any other court; I mean that having examined the parties and witnesses I always sum up the facts to the jury, and reserve to myself the law, if any point of law arises upon it, and let them always find the fact, nor am I aware that in any instance it has ever been determined by a majority, or that they are aware that it is not necessary that they should be unanimous.

You have the power by the Act of appointing a deputy?—I have.

You have appointed a deputy?—I consider myself obliged to appoint a deputy, because the deputy must be approved by the jury after three weeks nomination; I am therefore obliged to appoint a deputy, because, in case of illness, there might not be time for the three weeks approval of the jury.

Do you generally sit yourself, or does your deputy sit?—I divide the labour with my deputy, sometimes sitting on alternate days, but more frequently taking a portion of the work of each day.

Who is your deputy?—Mr. Dubois, a barrister.

Does the salary of your deputy depend upon the quantity of business which he does in the court?—The salary of my deputy depends upon our private arrangement: in fact I pay him both by salary and according to his attendance; if he were not to attend at all I should pay him a certain sum per annum, and I pay him a further sum, according to the number of days on which he attends, but it does not depend upon the number of causes each day.

What do you pay your deputy?—I pay Mr. Dubois 200 guineas a year salary; it is difficult for me to say how much I pay him extra every day on which he attends, although I sit on the same day and hear the larger portion of the causes, would be considered as a day's attendance by him upon the understanding between us; we sit 128 days in the year; 104 days in London, twelve days in Enfield, and twelve days in the Western Hundreds; it has always been the rule to sit the six winter months at Brentford, and six summer months at Uxbridge for those western hundreds; I now go to both Brentford and Uxbridge upon every court day, and have done so for some time, instead of going to Brentford only; I split the court for that day by summoning six jurymen at Uxbridge, and six more at Brentford; I then go early

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early to Brentford, dispose of all the business in that quarter, and immediately go over to Uxbridge, so that I hold two courts on that day.

Will you state how much you pay your deputy?—I believe it will average about 300 guineas a year, but from some peculiar circumstances I have sat as little as possible since the close of last session of Parliament, and for which extra trouble I shall have to pay him about fifty more; it is a part of our agreement, that in no case is he to be called on to attend when he has business elsewhere; but considering the unpleasant situation in which I have been placed for the last few months, he has sat almost always, very much I believe to his detriment as to other business, and certainly without any expectation of an adequate remuneration from me; I relinquished business in the court of King's Bench and my circuit, on receiving the appointment.

Then the number of causes that are tried before the deputy, has no effect whatever on his salary?—None whatever.

He does the whole business at present?—He has nearly so as above stated, although our agreement never contemplated such a necessity; the judicial business forms only one portion of the business; I have a great deal to do with respect to other matters that are not judicial; I solely attend to the whole regulation of the office, the receipt and responsiblity of the money, and the charge of the officers, as to their discharge of duty, which is no slight charge; and I am obliged frequently to attend to hear complaints, and have been under the necessity of discharging several officers for embezzling monies and other mal-practices, and of myself paying their deficiencies.

You reserve all those duties to yourself?—Yes.

Then at present, the whole judicial business is done by Mr. Dubois?—Nearly the whole.

Do the same suitors attend more than once during the year?—No; they are exempted by law after having served once in the year; I should think it would hardly go round once in two or three years.

In point of fact, they do not volunteer to attend?—Certainly not; they sit there without remuneration in any degree whatever; at the end of each month, my registrar I believe, gives them 3 *l.* which is a sort of substitute for what originally was a dinner for the jury of the month; but it is no remuneration for the labour they undergo, because it is an immense labour for persons, most of them people of the first respectability in trade.

The 3 *l.* that you give them is entirely at your option?—Entirely; I found it so, and I have never altered it; I have never diminished any of my expenses since I have been there; all the alterations I have made, have been the other way; my only diminution has been in my receipts.

They have no fees attached to their office?—None, whatever.

Are the suitors aware that this gift of yours is optional with you?—I should think so, but I cannot say; I never give it myself.

According to the Act, you have the power of examining on oath, the plaintiff and the defendant?—I have.

Do you put that often in practice?—Very often; the mode in which causes are tried is this; the parties being at the end of the table, I ask the plaintiffs, "What "is your demand?" he says so much; I then ask the defendant, "Do you dis- "pute this, in whole or in part?" if he says, "I do dispute it," then I call on the plaintiff, to state his case

Do you swear him first?—No, I hear their stories; if there is any thing in the story, I ask the defendant what he says to it, he tells his tale; and having heard both, I examine both the one and the other upon any point that I think will decide the issue; if it turns upon a point of credit, I examine them upon oath; I always avoid as much as I can, examining them upon oath, but if it comes to a point in issue, of course I always do it; and I often administer an oath when one party makes a statement, and the other side demands that he shall be sworn to it.

Are the jury called upon for decision in many cases where no oath has been administered?—Where, upon the narration of the parties there is no contradiction of important facts; when upon hearinig both their stories there is no disputed fact; supposing the two stories coincide, and the jury are of opinion, and I am opinion that the equity is all on one side, then there is no oath administered; and in the majority of cases that are heard, there is no dispute as to facts; I have the power to make such an order as I think fit; that order with poor people is very seldom to pay the sum down, it is generally to pay the debt, and to pay it in such instalments

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as we think they are capable of doing; if it were not so, it would soon fill the prisons beyond measure.

Do you make that order, or do the suitors make that order?—I make that order with this reservation also, that the jury will constantly mix with that question and say, "perhaps a little more time, sir, or a little less would be better;" I turn to them, and after the verdict, and after asking the party his means, I say, "I suppose he must pay so much a week," to which the jury generally assents.

In point of fact, are the debts generally paid when they are ordered to be paid in small sums, or do the persons who are to pay often abscond?—By far the greater part are paid.

Have you frequent instances of people disappearing from the jurisdiction, before they have paid their debts?—Not a great many; and I think the plaintiffs themselves would be in a lamentable situation, without the exercise of such a power, for twenty days of imprisonment pays the debt if it is a debt under 20*s.* and forty days for 40*s.*

What alterations do you think would be necessary in the constitution of the court, if its powers were extended to 10*l.*?—I am not prepared to answer that; I am prepared up to the extent of 5*l.* beyond which I should not think the jurisdiction in its present form ought to be extended; but up to which, I think no model of any court can be found better, beyond that it may be too summary; I should not like to give an opinion as to what would be the necessary alteration in the form of the court to qualify it for debts above 5*l.* not having considered the subject; the reason why I think this court the best is, because it is the most summary, without being too much so for small sums; and I may say as little expensive per cause, as it ought to be; no cause ought to cost more than 3*s.* 6*d.* in that court, if it ever does cost more, it is because the parties are dilatory or litigious, that is because the defendant does not appear when he ought to appear, and the additional 2*s.* which is the cost of another day he always pays; the plaintiff, therefore, even when he loses his cause never pays more than 3*s.* 6*d.* although 5*s.* 6*d.* may be the total costs incurred; 5*s.* 6*d.* being the extreme amount of costs that can be incurred for final judgment in any suit, when litigation is pushed to its utmost.

Do you conceive that it would be an improvement, or not, in the constitution of this court, if the judge was paid by a fixed salary instead of by fees?—I only fear being supposed to answer from motives of interest; if the Committee ask me whether I should do my work with equal pleasure, and perhaps with equal zeal, if I were paid a salary to go through this sort of work instead of being paid by fees, I certainly can say I should not, even if the salary equalled the amount; it is very disagreeable to see the squabbles among the lower class of persons, many of them in extreme misery and many of them swearing to any thing for trifles; the whole of that is to be gone through, and a severe examination very often is absolutely necessary; I am sure I should not go through it with the same pleasure, if the emolument were not as it were, the product of the causes; whatever reforms or sacrifices I have made in this court I can claim no merit for, because I believe that I have a direct pecuniary interest, independent of other feelings, in gaining a good character for the court, as such must in the end increase the public confidence in it and thereby increase its business.

Is there any advantage in being paid by fees, by which you can remit the costs occasionally to a person who is very poor?—The being paid by fees has given me the means, and will give every person the means of using a discretion as to the subject of costs. I do not know the amount of costs that are remitted, because they are remitted on general orders from me, which I can do where the fees are my own property, but not without; if a party claims for a debt under 1*s.* I have given a general order that no fee shall be taken on the hearing; there are many claims for 1*s.* and I am sorry to say that some of those questions about a shilling, have been of as much importance to the parties, as much larger sums to other persons, and such as arise from the passing bad money, the most difficult to determine justly. In some parts of London, such as St. Giles's, the Irish labourers only come here for a time, and are credited at a chandler's shop and at public houses, of the variety of things of that sort the Committee have not an idea; and in those cases I should be very sorry that the whole expenses should come to 3*s.* 6*d.* and therefore I do all that I can by these regulations to diminish them; I never grant executions for less than a shilling, instead of taking the money for the execution I pay the debt.

What is the fee for a summmons?—It is altogether 1*s.* 4*d.*

Can a suit be decided upon that fee for a summons only?—Not decided; if the party

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party summoned settles with the other party there is an end of it, then it does not come into court; but if it is not settled, it comes into court and is heard.

What are the other fees?—Fourpence is the fee for a summons, fourpence for a warrant, and fourpence for entering the plaint; these fees are founded upon the ancient county court forms; and I submit to the Committee that if they do any thing with respect to summary proceedings they should throw off these shackles, and if a summons is to be charged at 1 *s.* let it be called so, and not keep to the ancient forms, so that it should be difficult to find out what is meant; in truth, I receive 1 *s.* upon every summons, and the officers who serves it receives 4 *d*; in truth, I receive 2 *s.* 6 *d.* out of every 3 *s.* 6 *d.* but the rest goes to the officers of the court, with whose fees I have nothing to do; out of that sum the whole expense of the establishment falls upon the county clerk.

Has there not been a return of the fees?—There is a return of the number of causes tried, and a return of the number of fees upon each stage of a cause, but not the total amount received in a year in money; after a great deal of investigation, I am convinced that my average receipts do not exceed 2 *s.* 6 *d.* per cause as stated in my return, out of which I pay all expenses.

Do any attornies ever practise in your court?—No attornies; there are a set of persons who want to constitute themselves attornies, and with whom, therefore, I am at constant war; a set of men of whom I know nothing, who, I believe, for some small sum, perhaps usefully enough, go to persons and say, I will recover this debt for you; but they want me to give them an official character which I never will, the practice of the court will explain my reason. The summons is first taken out; that is served for a certain day, the plaintiff attends or not; if he does not attend his case is struck out, it has the operation of a nonsuit; if he attends, the defendant either attends or not, if they both attend the cause is heard, in that case it costs 3 *s.* 6 *d.* from beginning to end; if he does not attend the plaintiff alone is examined as to his debt, and upon that non-appearance of the defendant, an order nisi as it is called is made for the following week, which is served upon the defendant; if the defendant does not come on that day, final judgment is pronounced upon him; if he does come, the case is again heard; in that case the cause costs 5 *s.* 6 *d.* of which 5 *s.* 6 *d.* the defendant always pays 2 *s.* whether he wins the cause or not, because it was his delay and he has caused the plaintiff to come two days instead of one. There are cases in which they go further, such as this where one really cannot decide the cause, where the men on one side and the men on the other, either swear diametrically opposite or that they have forgotten witnesses, or have forgotten to bring papers, or something that would throw light upon the subject; the court is reduced to the dilemma of either to come to a decision in the dark, or of enlarging it to another day; when I enlarge a cause for my own satisfaction, or at the desire of the jury, it is always without costs; it frequently happens that a party prays to have it enlarged, to have an opportunity of producing other testimony under circumstances in which it would be great injustice to let the case be nonsuited; in that case the hearing is postponed to another day, at the expense of the party applying, that is the expense of a hearing on that occasion instead of putting them to the expense of a new suit.

But you must very often hear the cause over again, because you have another set of suitors?—It is always heard over again.

On whom does this enlargement of the time depend?—On the judge and jury; it frequently arises from the parties who come, being totally ignorant of the nature of the proceeding, thinking they have only to come and swear to a debt, or to state a fact; when they find it denied, and know they can prove it by a witness, they ask permission for it to stand over, and the granting it is a great saving of time and expense; the legal course would be, certainly, to nonsuit them, and I beg to say, that the interest of the county clerk would be to nonsuit them: with respect to the legality of the present mode of proceeding, I consulted Sir Samuel Shepherd; I am clear that the court has the power of pronouncing such order as the Act gives power to make, "such order from time to time" as it thinks equitable and just; I therefore think it is clearly contemplated that they need not decide at the moment, but that they shall make an order from time to time as they shall see fit.

Does this enlargement ever extend to more than one hearing?—I never knew of such a thing; it is generally on account of some point on which it is impossible to decide at the time; I should also say, that they amount to comparatively but very few.

It must now and then occur, that persons are summoned to whom it is personally

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very inconvenient, or perhaps impossible, that they should attend; in those cases do you not allow of any substitute for their personal appearance?—The plaintiff or defendant may attend himself to plead his own cause, and if he does not attend himself, all that is required is, that he must endorse his own name on the back of the summons, or if it is an order nisi, on the back of that, and that person, whoever he may be, whether it be the wife, or a friend, or an agent, in that case would be recognized as his representative, but I never recognize any persons as attornies.

Of course, if an attorney at law was sent, he would be permitted to state the case?—Certainly; it is on this point that I made one great amendment, an amendment which, I believe, has diminished my receipts full fifteen per cent.

What is this amendment?—It must be evident that it is the county clerk's interest that the defendant should not appear on the first day, because, if the party postpones coming, he gets two fees instead of one; when I came into office, I found that there was no such notice printed on the summons as there was upon the order nisi, that any person wishing not to attend in person, but to send somebody else for him, must write his name upon the back of the summons; that, formerly, was not announced on the summons, but it was on the order nisi; on the order nisi, the county clerk gets a small sum more by the party appearing, so that the county clerk, for his interest alone, would wish the parties not to attend on the summons, and not to let judgment go upon the order, but to appear: when I came there, I found this was the case, and I asked, why is not this printed; why do I see poor people coming here, who, when they come, and waited half a day, cannot be heard, and then an order is necessary, and they are obliged to lose the second day: no reason could be given but difference as to emolument.

Do you require any proof that it is inconvenient to the party to attend in order to enable them to attend by proxy?—No proof but his endorsement: I believe the origin of the endorsement is this, that among the poorer classes, men's wives and families often get into debt without the man's knowledge; many men might be sent to prison for their wives gin-shop scores.

Do you allow a recovery for gin?—A considerable portion of the business in that court is generally for public-house scores, but in all these cases, if it comes out in evidence at all that any portion of the debt is for spirits, I instantly strike it off, but I acknowledge, that if it does not come out I do not sift it out; I am not there as an advocate, and I do not think it my duty to inquire into it, unless it is mentioned, but I always strike it off if it is mentioned, even if it comes from the plaintiff himself; there is an Act of Parliament relating to it.

What length of time is there between the original summons and the hearing?—The summons, if taken out on certain days of the week, ending, I think, on the Monday, is for the following Thursday; if taken out on the other days, it is for the following Monday; there is never a week between taking out the summons and the day of hearing: by the Act, I am only to sit one day in the week, but increase of business has made it necessary to sit two days in the week; the summons is returnable on the Thursday; if the parties are not heard then, an order nisi is made for the following Thursday, so that it does not take a fortnight to obtain judgment; after that, of course there is the execution by the bailiff; when I say 5*s.* 6*d.* is the extreme costs, I do not mean to include the execution, but I mean up to the final judgment.

Can the summons be taken out when the court is not sitting?—On every day in the week; an officer is sitting there every day to grant summonses.

What proof do you require of the summons having been served?—The officers of the court serve them all; the bailiffs of the court have fees for serving them; they got into a habit before I was there, of taking the fees and giving the summonses to the plaintiffs to serve, and the plaintiffs were very willing to do it, but I stopped that entirely.

Is that included in the 3*s.* 6*d.*?—Yes.

How long before the day mentioned for the appearance of the defendant, must the summons be served?—I cannot answer this to a certainty.

Does it depend upon the situation of his dwelling?—This court is always in London, and therefore the distance does not affect it.

If they do not pay, do you commit them to Cold Bath Fields?—No.

There is some complaint before the House on that subject, that people are committed to Cold Bath Fields?—I never committed any man to Cold Bath Fields, nor do I think that I have the power to send them there; no man was ever sent by me but to Whitecross-street prison.

Do

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Do you shift your jury?—Every month I have a fresh jury, the same jurors that sit at Westminster.

What is the hour of sitting in the court?—Nine o'clock in the morning.

Generally speaking, how long do you sit?—We sometimes get half an hour about one o'clock, and then generally sit, I think on an average, to about five.

What is the reason of the difference?—Because Monday is an adjourned day; Thursday is the day named in the Act, and there are always more causes.

Causes do not originate on Monday?—Yes, they do in fact, but it is still called holding a court by adjournment.

Do you dispatch all the causes that are pending in the day you are sitting?—There is not an instance of one cause in arrear.

How many causes do you suppose you get through, taking one day with another?—I should think the number of causes, one week with the other, throughout the whole year, would average 200 a day.

That is 400 a week?—Yes; about 20,000 a year are the number of summonses; in my return to the House of Commons, I gave the number of causes heard, and I think the average was from 16,000 to 17,000; I had them all counted up, and they made 16,000 or 17,000; more than 150 per day; of those, the larger half are defaults, or persons coming to confess their debt, and to ask for time to know when they are to pay it; reducing the remainder therefore to perhaps seventy causes, more than half of those again, are not contested; so that a list of 200 or even 300 is easily got through, giving ample time for their investigation.

A good many come on only for the purpose of getting them paid by instalments?—A great many of them; the power which the court has of ordering that, under penalty of an execution, is of the greatest utility; from what I have seen, I think the labouring class would never pay their debts at a time.

Are the jury paid any thing for the causes?—Not a farthing.

How are they rewarded for their attendance?—Not at all.

Are they fined if they do not attend?—There is a defect in that Act of Parliament, in the want of power in that respect; I may fine them forty shillings, but that is only when there are not sufficient to do the business.

Are they generally respectable tradesmen?—Of the best class.

Would it be more convenient to sit oftener in the country?—I think, answering for the rural part of my jurisdiction, I never heard a wish expressed for more frequent sittings; the sitting in the country seldom lasts more than two or three hours, which does the work of the month.

It may be necessary to travel a considerable distance, to go to Brentford from some parts of the county of Middlesex?—I now sit on the same day at Brentford and Uxbridge, instead of going six months to Brentford and six months to Uxbridge; I go the first thing in the morning to Brentford and get through all the business there, and then immediately get across to Uxbridge as quick as I can.

Where do you sit again in the northern part of the county?—At Enfield.

That is a great way from Uxbridge; That is not the same day.

Are those the only places?—Yes; I am obliged to sit one day in the month in the hundred of Edmonton, and one day of every month within the hundreds of Isleworth and Elthorn, and there it was divided, the six winter months at Brentford, and the six summer months at Uxbridge; I now go to both those places on both those days.

To what amount do you think your court is capable of holding jurisdiction?—Without alteration, not beyond five pounds; but up to five pounds no material change ought to be made; beyond this sum I have not considered what change might be desirable, but if the Committee will permit, I will at some future sitting give my views on the subject.

Suppose it were extended to five pounds, would it be possible for your court, constituted as it is, to get through the business?—I should not have another cause to try in my opinion.

Why not?—Because I try many now up to two pounds, I think a seventh of the causes I try, and I counted them up, were for 1 *l.* 19 *s.* 11¼ *d.*; I should have more trouble by it, and individually should not gain fifty pounds a year, by the enlargement of the jurisdiction.

Has it frequently happened to you, to have to give judgment for the sum of 1 *l.* 19 *s.* 11¼ *d.*?—I should think one seventh of the causes are, where the claim is above my jurisdiction, and where they limit it to get the easy remedy in our court.

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Do your summonses contain the amount of the debt?—No; my summons is served at first, without stating the sum.

Is there any document in your court from which you could make out the number of those causes?—Taking a certain number of days, I could give the average, but to give a minute account it would take some time to make out, I could give the average of six months.

Where you believe the demand is reduced in order to bring them within your jurisdiction?—Causes in which the plaintiff has claimed 1 *l.* 19 *s.* 11 ½ *d.* I cannot say that was not his exact debt.

Do they not in your court, as they do in the courts of Westminster, put nominal damages, always taking care that those nominal damages shall be within the jurisdiction of the court, can you undertake to say, upon an investigation, what the real sum was?—The usual course is to name the exact sum they expect to recover, they do not put in a plaint; I ask the plaintiff how much do you claim, the plaintiff then names his sum, if the defendant say, "I do not owe it," then I desire the plaintiff to state his case.

Will the number of causes for 1 *l.* 19 *s.* 11 ½ *d.* appear in your book?—I have in my books such an entry of the sums claimed, as will enable me to make out the number.

When the plaintiff states the sum he demands, does he not also state the real amount of the debt?—They all know that they can only recover under two pounds, it will constantly come out when the bills are produced, that the debt is for a much larger sum.

How much, upon an average, are the men willing to abandon for the luxury of your court?—I know of one instance of thirteen pounds; there would be, therefore, no very essential difference in the time it would take were the jurisdiction increased to five pounds.

How far have you ever known the licence of paying by instalments extended?—The thing has got almost into a form; the common ordinary class of labourers who have families, generally pay a shilling a week, if they are single men, they raise it to eighteen-pence a week.

So that on a debt of forty shillings, a plaintiff may be forty weeks before he recovers it?—He may be forty weeks, but the labourer is seldom trusted to that amount; and, therefore, the indulgence is seldom granted to that extent.

There is no security against the man disappearing in the mean time?—None.

Should you think that it would derogate materially from the usefulness of that power vested in the court, if a condition was annexed to it preventing the extending that indulgence beyond a certain time, to be fixed, unless the person who claimed it were able to bring securities in the nature of bail who would answer, not for the debt, but for the man's being forthcoming if it was not duly paid?—I think it would be impossible for an Irish labourer, or for a labourer of any sort, to procure bail, nor have I ever heard any complaints from the plaintiffs of the present mode.

You say that it frequently happens that they pay by instalments, and you say that one-seventh of your causes are for sums above forty shillings?—I do not mean that one-seventh of the cases in which labourers are concerned come to 1 *l.* 19 *s.* 11 ½ *d.* I believe all the debts get paid by that means which would not be paid otherwise; as far as I am concerned, if there were a law to make it payable directly, it would be a great deal more convenient to me, for now I am obliged to keep ledger accounts of every shilling that is paid in, and which costs me above 300 *l.* a year, and which I should get rid of; the amount that is paid might pretty well be judged; I think last year the whole balance in hand on the year was 47 *l.* out of many thousands, that was at Christmas day, and since that, I believe, a great deal more has been paid; it certainly would be a great relief to me, if I had no power of granting instalments, or receiving and paying money.

You think the plaintiffs would suffer by it?—I have no doubt of it; I think the plaintiffs generally do not wish to press the labourers to pay immediately.

Lunæ, 17° *die Martii*, 1823.

Lord Viscount ALTHORP in the Chair.

Mr. William Woodcock Hayward.

(17 March.)

Mr. William Woodcock Hayward called in, and Examined.

YOU are an attorney at Cambridge?—I am.

You are also one of the under-sheriffs?—I was under-sheriff last year; but the county court is still held at the office of myself and partners, Mr. Pemberton and Mr. Fiske; we hold the county court for the present under-sheriff.

You are partner with Mr. Pemberton?—I am.

Was there any great increase in the business of the county court of Cambridge about ten years ago?—There was; I should say commencing about the year 1814.

A sudden increase?—I think a sudden increase, upon looking at the books, it appears to me that there was a sudden increase from that time, which has continued progressively to the present time. I may state it in this way; I find the average number of actions brought, for the ten years previous to 1815, to be only 82; whereas from 1815 to December 1822, embracing a period of eight years, the average is 484 in a year.

Is there any marked variation in the number in each year?—There is; in one year only, there were 764, that was in the year 1817; and it varies considerably from the average of 484; but with respect to the other years, 1815 is the smallest of the last eight years, and the others are some about 450, others 560, and some 360.

Can you attribute this great increase to any particular cause?—I feel a difficulty in assigning any particular reason; upon referring to the book, it appears that there are two attornies at Cambridge, whose names are very conspicuous; I think it may not be too much to say, that previous to their residing at Cambridge, the practice in the county court was not, by any means, so considerable.

When did they come to Cambridge?—I believe about the year 1814; I see one of the names at that time in the court book.

Not before?—Not before 1814; and it is not till 1814, that there appears to be an increase in the practice. In 1814, the name I allude to, certainly does frequently occur; and in the same year also, I see the name of the other attorney.

Did the same person preside in the court before 1814, and after?—It is the sheriff of the county for the time being, who nominally presides; but it has been held in Mr. Pemberton's office, from 1792 to the present time, with the exception of six years, at different intervals. The reason of the county court having been held so repeatedly at Mr. Pemberton's office is, in consequence of his having executed the office of under-sheriff fourteen times during the above period.

There was no alteration in the judge about the time you mentioned?—It was not held in the years 1793 and 1797, nor in 1814 and 1815, at the office of Mr. Pemberton; but was held in the office of the then under-sheriff, or of some person nominated by him.

Did it return to Mr. Pemberton's office in 1816?—Yes; then Mr. Pemberton was under-sheriff again; but in the years 1820 and 1821 it was not held there.

In all the others it was?—Yes.

Was there any change in the practice of the county court in 1814?—No, I am not aware that there was any change; there have been one or two new rules made, but nothing that would at all affect the general practice; there have been one or two alterations made, to give facility to the practice, and in order to remedy inconveniences which the increased practice discovered. For instance, the allowances to the bailiff for serving the summonses, was regulated by the distance at which the parties lived from Cambridge.

Are most of those causes arising near the town of Cambridge?—No, all over the county. There is a separate jurisdiction in the town of Cambridge, which takes cognizance of actions for any debt *above* 40*s.* therein arising; so that I should say, county court actions do not *mostly* arise within the town of Cambridge, but within the county generally.

From your experience of the practice of the county court, do you think that it is a convenient mode of recovering small debts?—I think that as at present established it is not a convenient mode; my reason for thinking so is, that the costs for the recovery of a small debt, are by far too great; I have several instances here, in actions which have been brought to trial. There are very few actions that come to

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trial; but in all such cases, the taxed costs are considerably more than the debt which would necessarily follow, because the court only takes cognizance of debts under 40*s.*

What is the greatest amount that you can state of the taxed costs in any cause?—I find one that was tried in 1819, the damages in that case were 6*s.* 9*d.* and the taxed costs 9*l.* 2*s.* 5*d.*

Can you say whether any considerable part of that was for witnesses?—There was some of it for witnesses.

Can you state the particulars?—I cannot in that particular case, but I have got with me a bill of costs, where a writ of inquiry was executed, judgment having been suffered to go by default; I find in that case the verdict was for 1*l.* 14*s.*, and the costs were 7*l.* 16*s.* 4*d.* I only find here an entry of 9*s.* as paid for witnesses.

Will you state the different particulars in that bill of costs?—I will; I observe it was taxed by myself in the year 1818.

[*The witness read the same, as follows:*]

"In the Court of the County of Cambridge:

1818.		£.	s.	d.
John Miller	Letter for payment of debt		1	8
£. — 1 8	Attending plaintiff; advising as to bringing this action	—	1	8
John Allen	Instruction and writ to sue	—	1	8
	Summons and fee	—	5	6
	Searching for appearance	—	1	8
	Court fee	—	2	8
	Court, 16th April 1818:			
	Distringas and fee	—	4	6
	Paid officer	—	10	—
	Court fee	—	2	8
	Court, 14th May:			
— 1 8	Defendant having entered an appearance, searching for rule to declare	—	1	8
— 2 8	Court fee	—	2	8
	Court, 11th June:			
— 1 8	Searching for peremptory rule to declare	—	1	8
— 2 8	Court fee	—	2	8
	Court, 9th July:			
	Instructions for declaration	—	1	8
	Drawing and ingrossing same, fol. 18	—	6	—
	Stamps, and paid filing	—	2	—
	Rule to plead	—	5	4
	Court fee	—	2	8
	Court, 6th August:			
	Searching for plea	—	1	8
	Peremptory rule to declare	—	5	4
	Court fee	—	2	8
	Court, 3d September:			
	Searching again for plea	—	1	8
	Attending to enter interlocutory judgment	—	1	8
	Paid entering same	—	1	8
	Court fee	—	2	8
	Court, 1st October:			
— 1 6	Drawing notice of inquiry and copies for service	—	3	—
	Service	—	1	—
	Instructions for writ of inquiry	—	1	8
	Drawing and ingrossing same, folio 24	—	8	—
	Duty and parchment	—	7	8
— 1 8	Instructions for brief and examining witnesses	—	3	4
	Drawing same, and fair copy, one sheet	—	5	—

				£.	s.	d.
			COURT, 1st October 1817—*(continued.)*			
			Subpœna and fee		4	6
	1	8	Attending to get same signed		1	8
	2	—	Copies and service on two witnesses at Over		7	—
	4	—	Conduct money and expenses		8	—
			Paid jury		12	—
			Sheriff		10	6
		9	Bailiff 5*s.* 6*d.* more for witnesses 1*s.*		6	6
			Room and waiter		3	—
	3	10	Attending executing inquiry		10	6
			Entering final judgment		1	8
			Paid		1	8
			Court fee		2	8
			COURT, 29th October:			
	2	2	Notice of taxing, copies and service		4	—
			Attending taxation		1	8
			Paid taxing		1	8
	1	—	Bill of costs		2	—
	2	8	Court fee		2	8
£.	1	10	8	£.	9	7 —
			Deduct		1	10 8
				£.	7	16 4

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November 4th, 1818.

Costs taxed at £.7. 16*s.* 4*d.*

Tho' George Apreece, esq. Sheriff."

(Mr. Hayward.)—The whole of the bill I have now read, amounted to 9*l.* 7*s.* and from that sum was deducted 1*l.* 10*s.* 8*d.* considered as not allowable in taxation; the verdict was for 1*l.* 14*s.* so that the plaintiff would have to pay to his attorney the sum of 1*l.* 10*s.* 8*d.* for costs, which he could not recover; thus even the *extra costs* are nearly equal to the damages.

You stated that the expense of witnesses in that case was 9*s.*?—Yes.

How far from Cambridge did the cause of this action arise?—The subpœnas were served on the witnesses at Over, which is seven or eight miles distant from Cambridge; witnesses expenses are regulated of course by the distance from which they come. There were but two witnesses in this case.

Can you suggest any alterations in the mode of conducting the business in the county court, that you think would be improvements?—One, which has been considerably discussed among those who have taken an interest in the subject, is, to do away with all the pleadings, commencing with the declaration, and to alter the summons. I have brought a form of the summons with me, which is the first process answering to writs in the superior courts; it summons defendants to appear at the county court. The summons states no particulars of the nature of the debt, but it might be proper to direct this to be done, more specifically, in the body of the summons; I should also recommend, that a bill of particulars should be annexed to the summons, stating the nature and amount of the plaintiff's demand, so that there might be no dispute as to the cause of action. I conceive that these regulations would save a vast expense. There is another thing that I would mention; the defendant is summoned, as I have stated, according to the form that lies before the Committee, and if he does not appear, according to the exigency of that summons, a distringas then issues against his effects, for the contempt of court, in not appearing: now, if a defendant inadvertently does not appear, and a distringas issues, it will cost him sixteen or seventeen shillings to purge the contempt, before he can be entitled to enter an appearance: he must also then pay the costs of the distringas, which costs, if he should afterwards get a verdict, he cannot recover, as they form no part of the costs of the cause, but are incurred merely by the contempt of court, and this is a grievance of very frequent occurrence.

What remedy would you propose to this?—In the superior courts, if the defendant does not appear within eight days after the return of the writ, the plaintiff is authorized by Act of Parliament to enter an appearance for him; and therefore

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I should recommend that some plan of the same sort might be adopted here. If the defendant does not appear according to the exigency of the summons, let the plaintiff, upon an affidavit, or some other proof being given of the service of the summons, have authority to enter an appearance for the defendant, and go on with the suit; perhaps the least expensive mode of proving the service of the summons would be, the bailiff who served it to attend the court and prove that fact.

Is the appearance entered in the courts above upon the first default?—If defendants do not appear by the time I have before-mentioned, then upon the affidavit of the service of the writ, the plaintiff may enter an appearance for him.

Without any pleas?—Yes.

Would it not be a considerable improvement if there was a power of selling the goods when they were distrained?—That would depend a great deal upon the mode of sale. This distringas has no reference to the merits of the action, but is merely to compel an appearance, and when once an appearance is entered, the goods are returned; the officer who keeps possession of them cannot sell them.

In case of a final judgment, have you any other process to compel compliance with that judgment but a distringas?—Yes; we have then a levari facias. I have got here the form of what is termed a levari facias.

[*The witness read the same as follows:*]

"*Cambridgeshire to wit.*—Thomas Spooner, esq. sheriff of the county aforesaid, to Foreman Biggs and Chappel Gilbert Brand my bailiffs, greeting,—I command you that of the goods and chattels of Thomas Halls, you cause to be made as well a certain debt of one pound and nine shillings, which William Randall has recovered in my county court against him, as also four pounds nine shillings and fourpence which were adjudged to the said William Randall in the same court, for the costs and charges by him about his suit in that behalf expended; and have you that money at my next county court, to be holden at Cambridge in the said county, on the twenty-fifth day of December instant, to render to the said William Randall for the debt and damages aforesaid, whereof the said Thomas Halls is convicted: and this shall be your authority. Dated the 27th day of November, in the fifty-eighth year of the reign of His Majesty King George the 3d.

"*Fetch*, Cambridge,
"2d December, 1817." Plaintiff's attorney."

Have you ever known any great expense incurred in the county court, owing to the distance the witnesses have to come?—No; we never had any special occurrence of that sort, there are so few cases that come to trial.

When you speak of the number of causes in the county court, you mean the number of summonses?—Yes, of actions brought.

Are you able to say what proportion of those have come to trial?—I have taken out an account of the number of causes that have been tried, and it appears, that in the last eight years, during which time there has been this great increase of actions brought in the county court, there have been only fourteen causes tried, and thirteen writs of inquiry executed.

What time is required by any rule in your court for serving the summons before the day on which appearance is ordered; is there any rule limiting the time?—It must be served before the court day; I think any day before the court day is sufficient, and then the defendants have the whole of the court day to appear in.

It has been stated to the Committee, that a practice exists of serving the summons on the morning of the court day frequently; are you aware of that?—No.

Should you, sitting in that court as judge, allow such service to be good service, in order to subject the defendant to issuing a distringas if he did not appear, the service having been on that very day?—I never recollect such a case arising.

What proof do you require of the service of the summons?—None at all is required of the service, if the defendant were to come forward and prove that he never received the summons, he would defeat the plaintiff.

What is the ground of the application which the plaintiff makes to obtain a distringas?—Merely the non-appearance of the defendant.

Does not he state that he has served the summons?—No, that is not required; the summons is served by the bailiff, and the plaintiff's attorney searches the court to see whether an appearance is entered; if none appears to be entered, a distringas issues as a matter of course; the parties take the distringas at their own risk if the

summons

summons has not been served; I apprehend in such case, the court would interfere and cause the costs to fall upon the plaintiff.

Mr. William Woodcock Hayward.

(17 March.)

Have they the power of doing so?—I think so.

By what authority?—They would not allow the costs of the distringas in taxation. which the plaintiff defrays the expense of, in the first instance; or the distringas might be set aside by rule of court for irregularity.

Can you positively state it to us, that the practice is frequent in your court, of summoning the parties on the very morning appointed for their appearance; should you not consider that as a very mischievous practice?—Undoubtedly, very mischievous; upon recollection, the practice certainly is, that if the summons is served before twelve o'clock on the court day, it is sufficient.

How many suitors generally attend a county court?—None; the court is always held once every lunar month, and on a Thursday; it is not generally held at the office of the under-sheriff if a cause is tried, but usually at an inn for the convenience of parties; causes are often not tried on the court day, but by adjournment, on a day fixed upon by the parties.

How do you summon the jury?—By the bailiff.

What right have you to summon a jury?—There is never any difficulty in getting them to attend, and therefore the right has not been questioned.

What fee have they for attending?—One shilling each.

Twelve shillings a cause?—Yes.

Do they decide by a majority, or must they be unanimous?—They must be unanimous in their verdict.

You do not at all know any warrant that you have for summoning the jury, only that it is the constant practice?—It is the constant practice. We do not conceive that we could fine a juryman for non-attendance; but then we suppose that the superior courts would interfere to compel them to attend. It is not a court of record, and therefore we have no power to fine or imprison. The juries are summoned in the same manner as on the execution of writs of inquiry in the superior courts, and are composed of the same sort of persons.

Supposing the jurisdiction of the county court was extended to 10*l.* should you prefer a homage jury or a regular jury to give the verdict?—I think a homage jury would understand the matter better; that is, I believe, somewhat similar to the manner in which the courts of conscience are established.

In giving that answer, you consider that there would be no judge in the court, that the jury would be the judges of the law and the fact both?—I believe there is a chief commissioner in courts of conscience, who conducts the business, but they would all have their vote in the matter.

Supposing that a barrister was appointed as assessor to the sheriff, and was to sit as judge in the county court, should you then prefer a homage jury to a jury of twelve?—I should prefer it then; I think they would be more respectable people, and men generally understanding the matter better. The present juries are composed of illiterate men, who are so far objectionable. If you could compel the attendance of freeholders, then a jury would be unobjectionable.

You do not get men of the same description as serve on petty juries in the courts above?—No.

Is there any qualification necessary?—None; they are termed, I think, good and lawful men of the county, or something to that effect.

You state that you are not able to attribute this sudden increase to anything but the appearance of two practitioners about that time in the court; do you not apprehend that there is at present a good deal of vexation arising from processes out of the county court?—Certainly. I conceive that it is a most vexatious court as at present constituted.

Can you specify any particular cases of grievances that have fallen under your notice, as arising from the practice?—I cannot say that I recollect any particular case, for I never practised in the court myself.

Have you not attended as judge?—There was no cause tried whilst I was under-sheriff.

When you say that this is a source of vexation, do you mean that you apprehend that this process is made the means of extorting money from persons?—I really think so. I am inclined to believe that the reason of there being so few causes tried, is the inability of the defendants to proceed with the cause, and I should think they would rather in many cases submit to the payment of the debt and the preliminary costs, than go on with the cause, for fear of incurring much heavier costs.

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(17 March.)

Have any cases of the sort fallen under your personal knowledge, or from information from respectable individuals in the profession?—I have heard of several cases at different times, but do not at present recollect the particulars.

Do you try any cases of replevin in the county court?—Actions of replevin are always brought in the county court, but they are then removed by a writ of recordari facias loquelam into the superior courts.

Do you ever recollect an instance of any cause being tried under a writ of justicies, in the county court of Cambridge?—Never; during the last eight years I may say generally, that the causes have been principally for small debts, such as alehouse scores and debts of that nature.

Are the largest number of summonses from the very near neighbourhood of Cambridge?—No, I do not think so. I think they are dispersed all over the county; I find one court at which one of the attornies brought thirty-seven actions, besides carrying on the proceedings in several others, in which he was concerned.

Mr. William Statham called in; and Examined.

Mr. William Statham.

YOU live at Liverpool?—I do; I am town clerk of the borough of Liverpool.

What courts are there in the borough of Liverpool, for the recovery of debts?—There is a court called the Borough court, or court of passage, for the recovery of debts to any amount.

How often does that sit?—There is a weekly court day every Thursday, for the purpose of entering all the pleadings, and the court itself sits for the trial of causes every quarter, at the time of the quarter-sessions.

Only once a quarter?—Only once a quarter for the trial of causes; but for inquiries, once a month for actions that are not defended.

Does that court go to any amount of debt?—To any amount, it is a court of record by prescription.

What is the mode of proceeding in that court?—By a serviceable writ, or a bailable writ on an affidavit of the debt, precisely like the courts above; it follows exactly the practice of the court of King's Bench.

Is the expense as great as in the court of King's Bench?—No; the expense of a trial in the court there, is only from 12 *l.* to 14 *l.* including every thing; I find the average to be 13 *l* 4 *s.*

Have you any bill of costs here?—I have a memorandum which I made of the costs, on an average of three years, in the borough court; the average is 13 *l.* 4 *s.*

Have you ever known the costs amount to 36 *l.* in the borough court?—There may probably have been some very special action; I cannot say they have not amounted to that, but the average certainly does not exceed from 12 *l.* to 14 *l.*

Is the court attended by barristers?—Yes; and the recorder assists the mayor and bailiffs who preside.

To what do you attribute the expense in this court being less than the expense in the superior courts of Westminster-hall?—There are no travelling expenses of witnesses; the court has only jurisdiction over the borough, and in many cases no sum is paid to witnesses.

Is that the only difference, because that often happens in the courts of Westminster-hall?—That circumstance, and the pleadings, in general very simple, and the small sums paid on filing the pleadings.

Are the majority of cases in that court above or below 15 *l.*?—I find that upon an average of the years 1816, 1817 and 1818, the number of writs sued out in each year is as follows; 1581—of those bailable, 441; under 15 *l.* and not less than 5 *l.* 753; and under 5 *l.* 385; that the average number of trials for the same years were, 65 trials in a year above 5 *l.* and 21 under 5 *l.*

Does the amount of the expense in a cause depend at all upon the sum endeavoured to be recovered?—Not at all.

Are the proceedings liable to the same stamp duties that they are in the courts of Westminster-hall?—Not so high, the affidavit stamp is eighteen-pence, where in the superior courts it is half-a-crown, and so in proportion.

Does the Stamp Act make a difference?—It does, with regard to inferior courts.

Besides the court of passage, is there any other court for the recovery of small debts?—A court of requests for the recovery of debts under forty shillings.

How is that court constituted?—By Act of Parliament.

Do you recollect the Act?—The 25th year of King George the Second; it is just

just upon the same footing as all the other courts for small debts, commissioners are appointed by the common council.

Mr. William Statham. (17 March.)

Are they chosen out of the respectable inhabitants of the town?—They are.

Serving without remuneration?—Yes.

You know no difference in the constitution of that court from other courts of requests?—I do not.

Is that the only court for the recovery of small debts in the borough of Liverpool?—It is.

Is there any court near Liverpool that you are acquainted with?—There is a court, called the West Derby court, or Wapentake court, for the recovery of debts, I cannot speak with any certainty about the practice of that court.

Mr. James Anderton called in; and Examined.

WHAT are you?—I am an attorney.

Mr. James Anderton.

Have you in your practice as an attorney, had occasion to see any defects in the present mode of recovering debts under 15*l.*?—I have.

Will you state what those defects are?—The defects are, the enormous expenses that have accrued both to the plaintiff and to the defendant, in the trying of causes for small debts.

Have you ever turned your mind to any mode of remedying those defects?—I have given considerable attention to it.

Will you be good enough to state what has been the result of that consideration?—The great defect in the present law, arises in some measure from the defendant being able at the expense of a few shillings, to put the plaintiff in the recovery of a small debt to an expense of forty or fifty pounds; and if he brings a writ of error, which has frequently been done, he may run him up to one or two hundred pounds.

How should you propose to remedy that evil?—I would propose to remedy it in this way; that a process should issue as it does now, from the superior courts, that it should have endorsed upon it the amount of the plaintiff's claim; that the defendant should have at least ten days to pay the debt, and to pay the costs before the attorney takes any further proceedings against him; and that the writ should not require personal service, that it should be sufficient service to leave it at the house of the defendant with his wife or servant, and for this reason, that it frequently occurs that the plaintiff is obliged to issue three or four writs before he is able to get the defendant served; and by giving him ten days, it would allow sufficient time to settle the action at a small expense. I have, in actions of trespass, issued as many as four or five writs before I could get the defendant served.

Supposing the defendant to be dishonestly disposed, how do you apprehend the matter would be better by giving him ten days?—It would give him that opportunity to settle; but if he did not do it, I would upon the expiration of the ten days, direct a declaration should be filed, to which the defendant should have four days to plead; but he should not plead to the action without filing an affidavit, that he had a good defence to it, and in default of his doing that, I would then, upon an affidavit of the service of the process, sign a judgment, which would be done at a trifling expense, and an execution should then issue against his person or his goods.

How much do you think you would diminish the expense by this alteration?—More than two thirds.

Supposing the defendant was not able to file such an affidavit as you describe; what then?—I would then as before stated, sign judgment and issue an execution.

Does not a great part of the expense arise from the pleadings and the declaration?—It does.

By the process which you propose, would that be diminished?—Yes; because I would limit the length of the declaration to twenty folios, for debts under fifteen pounds, in order that an attorney should not be at liberty to run his declaration to any length.

How long have you known them to be?—I have known them as much as fifty folios; and in cases of replevin and trespass to upwards of 150.

What do you think would be the average expense of recovering a debt of ten pounds by this process?—I should think three or four pounds.

What do you propose to do in case of a writ of error?—I would do away with it entirely; I would never suffer either a writ of error, or a demurrer, without an affidavit that defendant had merits.

Mr. James Anderton. 17 March.

Do you think that a defendant, who now defends his cause, would ever refuse to make an affidavit that he had a good defence?—I think he would.

Do not you think there are a number of defendants that would not?—There may be some certainly; but, if he pleaded, I should then propose that instead of the record being made expensively, as it is now, when tried by the superior courts, I would send it down in the country to be tried, either at the quarter sessions, or by the sheriff at the county court.

Then why not originate it at once in the county court, provided that process could be so improved?—I have always found that persons in general have more faith, and are more desirous that the business should be done through the superior courts than any others, as, for instance, take the Marshalsea court in Middlesex, and the Sheriff's court in London, and also many of the provincial courts who now have the power of commencing actions for debts to any amount; but, in the provincial courts, it is a power seldom or never exercised, and if exercised, the causes are generally removed into the courts above.

Do not you think that that is attributable to the defective state of the process, and the powers in those courts?—I think not.

In what courts particularly have you found this unwillingness in the plaintiffs to proceed?—I have always found it so on the part of clients, but it might however be advantageous in Middlesex, and be a relief to the superior courts, to extend the jurisdiction of the Marshalsea court, which is now rendered incompetent, in some measure, by its practice being limited to only six or eight attornies, and it is the same with the Sheriff's court in London, which is also limited to about the same number.

Would it not go materially to cure the defects in those courts, if that privilege was done away, and the respectable part of the profession were permitted to practise there?—From the constitution of those courts, I think it would be a material advantage to traders in Middlesex and London, and be a great relief to the other courts.

By the process which you have described, should you at all diminish the expense of witnesses coming?—I am afraid not.

Does not that form a considerable part of the expense of trying a cause?—That and counsel's fees, and the money paid for court fees, generally amount to more than two-thirds of an attorney's bill.

How then, if those expenses which you do not propose to diminish from two-thirds of the expense of a cause, how is it that the process which you describe would diminish the whole expense of the cause two-thirds?—It would diminish it in this way, that the defendant would not be in the situation in which he now is, to drive the plaintiff to a trial; and in the next place, by sending the record down to the quarter sessions, or to the county court, the fees and briefs to counsel would generally be saved; and there is this advantage in it, that by retaining the business in the superior courts, you are more likely to keep it in the hands of respectable men.

Have you had any experience yourself in any county court?—I have.

In what county court?—In Lincolnshire.

At Lincoln?—Yes; but it is some years since, I was then in the under sheriff's office.

Is there extensive practice in that court?—There was then, and I believe is now; but the business is generally procured through the sheriff's officers, and the sheriff's officers in fact do the greater part of the business; and some of the attornies who practise in the county courts allow them to participate in their fees. I have got some county court papers in my hand, which show the way in which the business is done. There is, first, a letter from a sheriff's officer, in Nottingham, he says—

"Mansfield, September 23d, 1820.

"Mr. Paul Swift,

"I am instructed by Mr. Joseph Marsh, to apply to you for payment of 6*s.* 4*d.* which you justly stand indebted to him; and, therefore, give you notice, unless that sum, together with 2*s.* 6*d.* for this application, is paid into my hands on or before Wednesday next, you will be summoned for the same, without further notice or delay.

I am, your humble servant,

Joseph Platts, Bailiff."

There

Mr. James Anderton.
(17 March.)

There is a man of the name of Weston, who is a sheriff's officer, at Downham, in Norfolk, who practises a great deal in that court; I have got several of his letters applying for the payment of debts.

If the constitution of the county court was improved, do not you think that that would tend to lead persons of greater respectability to practise in it?—I think it would, if it was improved in the way in which I have pointed out, by the process issuing from the superior courts, giving the county court jurisdiction to try.

Why do you think it is necessary for this improvement, that the process should issue from the superior courts?—I think in general that persons feel a higher veneration for the superior courts, than for any others; and I think also, that defendants would be more inclined to settle on the first process, if issued from a superior court, than they would if it issued from an inferior court, and would be more fearful of the expense.

Although all the future proceedings should be in an inferior court?—I think so.

A good deal of your calculation, with respect to the diminution of expense, seems to be, that the issuing of the first order would be quite sufficient, and prevent the defendant from bringing the plaintiff into court?—I think so; I have often found the fear of expense has induced the parties to settle.

When a bill was brought into the House of Commons two years ago, were you concerned with a number of London attornies, to oppose that bill?—Yes; I am a member of the Metropolitan Law Society, which is instituted for the purpose of preventing abuses in the profession, and supporting the credit and respectability of attornies and solicitors, and promoting fair and honourable practice.

It is composed of the respectable members of the profession?—It is.

Who is the present secretary of that society?—I am.

Upon the whole, you are of opinion, that some alteration in the mode of recovering debts under fifteen pounds, would be an improvement in the law?—Unquestionably; and that I think is the opinion of every respectable man in the profession.

Have you any doubt, that any respectable man would not hesitate to advise his client, not to sue for a small debt by the present process?—On the contrary, it is frequently done; I have myself often advised my clients not to bring actions for small sums; and, if they do it, I seldom go on beyond a writ; for, if I find the defendant is not able to pay, and does not come in and settle on the service of a writ, I advise them not to go any further.

You, acting for the plaintiff, do that?—Yes; I say, I cannot conscientiously advise you to go any further; and I know many other attornies who do the same.

Do you find that debts are frequently settled on issuing the writ?—The greater part of them are; I think nearly three-fourths.

Has your practice been extensive in London?—I have seen a great deal of practice.

Could you give the Committee any notion what proportion of writs issued in the upper courts, are for debts under fifteen pounds?—I think nearly two-thirds.

Would there be any means in the offices of giving the direct and precise information on that subject?—No; it is quite impossible; the debts upon serviceable process are never endorsed.

We can only collect it from practitioners like yourself?—That is the only way.

What proportion do you think the writs under ten pounds bear to the whole?—I think about one-third.

Then you think that as many writs issued between ten and fifteen pounds as under ten pounds?—That is my opinion.

Does the court of Exchequer possess any advantages over the other courts?—It does.

Will you state what they are?—First, they possess a superior advantage over the other courts by the writ of subpœna, which does not require personal service; and, secondly, writs of error brought in that court, go from that court into the House of Lords, which is a very expensive proceeding, and consequently it is very seldom a writ of error is brought in actions commenced in the Exchequer; the business of which court is confined to twenty attornies. I have a paper relating to the present process for recovering debts in the King's Bench and Common Pleas, which I beg to produce to the Committee.

What is that paper?—It is a paper which has been generally distributed among the prisons.

You know that it has?—I do.

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(17 March.)

Have you read it over attentively?—I have.

Can you state, whether it does, or does not contain, without exaggeration, the mode in which a defendant may vex a plaintiff?—It does.

Is there any incorrectness which you wish to remark in it?—No, substantially it is correct.

[*It was delivered in, and read as follows:*]

"When arrested and held to bail, and after being served with a declaration, you may plead the general issue, which puts you on for trial sooner than any other plea; but if you wish to vex your plaintiff, and put him about, put in a special plea. If you are in custody, order your attorney to plead in person; this will cost you one guinea, and run your plaintiff to thirty pounds expense. If you do not intend to try the cause, you have no occasion to do any thing else till the plaintiff gets judgment against you, which he must do the term after you put in a special plea: the plaintiff is obliged to send you a paper book, which you must return to his attorney with seven shillings and sixpence, otherwise you will not put him to more than half the expense. When he proceeds and gets judgment against you, then order your attorney to search the final judgment office in the Temple. When searched, and found they have got final judgment signed against you, then give plaintiff's attorney notice for him and your attorney to be present with the master at the time the plaintiff taxes his costs, at which time your attorney must have a writ of error with him, and give to the plaintiff's attorney before the master, at the time the master taxes the costs. It will put the plaintiff to great expense, which he will then have to pay or go the ground over again. The writ of error will cost four guineas by a London attorney; but if you wish to be more troublesome, make the writ returnable in Parliament, which will cost you one guinea extra, and the plaintiff one hundred pounds if he has courage to follow you. And further, you may then file a bill in Chancery or Exchequer; if he does not then give his answer, your bill will get an injunction against him; you may then get an attachment from the court where your bill was filed, and take his body for contempt of court.

"If arrested in the country, give bail to the sheriff on return of the writ: come or send to London, to justify, which will clear your friends in the country who bailed you. When bail is justified in open court it discharges you from confinement if in custody: the same bail will bail in error.

"Should you be served with a copy of a writ, take no notice of it, only by taking care of it: when you receive a declaration, put in a special plea immediately, and it is most likely you will hear no more of it.

"Plantiff's cost - £.314. 0. 0.
"Defendant's cost £. 24. 19. 6.

"Printed and sold by J. Fairburn, 110, Minories.—price 2*d.*"

In the way that you propose, suppose a cause for the recovery of a small debt, in the hands of a respectable attorney, and such regulations as you have suggested, devised for the purpose of preventing foul play on the part of the defendant, what do you apprehend, exclusive of the expense of witnesses, would be the limit of the expense for the recovery of a debt of five pounds?—I think eight or nine pounds would be the utmost. I am of opinion, if law is made too cheap, persons would be continually defending themselves and driving the plaintiffs to trial, and plaintiffs would frequently obstinately resist settling without a trial.

You have mentioned once or twice the court of quarter sessions, are you aware that the court of quarter sessions has no jurisdiction in cases of debt?—I am; but they might have, by sending a writ of justicies to the chairman of that court to try the record.

Did you ever know a writ of justicies directed to the quarter sessions?—No, it is always directed to the sheriff.

Supposing county courts to have their process amended and made more effectual, and to be furnished with a respectable barrister, as an assessor, and to be opened under certain regulations to respectable attornies, should you then apprehend that there would be any difficulty in originating suits in those courts?—I think it would be opening a door to greater litigation in the country, and not so satisfactory as if the proceedings were in the superior courts.

You trust to the fear of an expensive process inducing the defendant to come to an early settlement?—Certainly, that is my opinion, and I have frequently found it to have that effect.

Should

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Should you think the county court, as at present constituted, would be a proper court to try those causes by writ of justicies?—I think it would, in the same way as writs of inquiry are now executed before the sheriff, and these are frequently executed in actions to a considerable amount.

What is the expense of a writ of justicies?—I never had occasion to issue one; it issues from the court of Chancery, and from the inquiries I have made, I think it is about 5*l.*

How is a writ of inquiry executed?—Before the under-sheriff.

Is there a jury?—There is.

Is that the case in the county court?—It is.

Is it a homage jury, or like the juries above?—Like the juries above.

Is the process on a bill of exchange much more expensive than a simple contract debt?—The process is not, but it is by the multiplication of actions upon it; actions being frequently brought against five or six persons, against the drawer, the acceptor and the indorsers, and I have known attornies get indorsers to the bill, for the purpose of multiplying the actions.

What remedy would you propose for that?—I would propose that the person bringing the action should make his selection, and give notice to the rest of the parties that such action is brought, and that all the parties should be bound by the judgment against one.

Somewhat in the way that the under-writers are now bound under consolidation?—Yes.

Is there not, however, a great distinction between the parties on bills of exchange and the under-writers to a policy, inasmuch as each of the parties upon the former may have, and would be likely to have, much more distinct defences?—I would allow them to give notice that they have a defence to the action, and still not be bound by the action brought.

Then you would propose to allow it to bind the several parties on the bills of exchange, provided they chuse to abide by the verdict?—Yes; and they did not give notice to the plaintiff's attorney of their refusal, within so many days afterwards. This would also give any of the parties to the bill an opportunity to settle without much expense.

Do you apprehend that the taking these small debts out of their present channel, and putting them in a new method such as is proposed, would have the effect of depriving the present body of attornies of a very material part of their business?—I think it would, and if you established a county court, persons residing in different parts of the county would not be so well enabled, as they are now, to prosecute their suits; the suits now are prosecuted by attornies residing in the country, through their agents in town; but if you establish a county court, every country attorney will then be obliged to transact his own business; he could not then, as he does now, do it through a law agent, and the consequence would be, that respectable attornies in the country would have nothing to do with it.

The effect of the diminution of practice would fall principally upon the class of attornies who act as agents for the country attornies?—It would.

Just in that proportion, would there not be a saving of expense to the client, by avoiding that double charge which now lies upon him, for the principal in the country and the agent of that principal in town?—The agents in town in common law causes, scarcely get 10 per cent for the money they advance; indeed I think I may say, that for myself instead of gaining money by the common law, I have upon the whole lost money by it.

Why should you suppose that if a court well constituted as to its process, and under a respectable judge, were appointed to administer justice in the three or four principal market towns in every county, at stated periods, that a respectable practitioner in the country would refuse to attend and do business in that court as they now do in the quarter sessions?—Unless they were equally remunerated, they would not do it; and then that remuneration would probaby amount to more than I should propose to give them by issuing the process in the superior court; and the respectable attornies in the country generally dislike the practice of the common law.

Why do you think it would amount to more?—It would amount to more, supposing you remunerated them for their services; at least if you remunerate them in the same way as attornies attending the quarter sessions.

At present, the suit comes first into the attorney's hands in the country, he employs an attorney in town, he has all the expense of the first process in the court above, and what is proposed to be done appears to be no more than cutting off some

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steps in that proceeding; why do you suppose that the expense would still continue the same?—Because I think you must give him the same fees on the proceedings as though they issued from the courts above, or a person in respectable practice would not think it worth his attention.

Is there not a double expense now?—No; to the suitor the expense is nearly the same: the attorney in the country does not upon a writ get above 15*s.*; if I am an attorney practising in town, I take the whole, but if I am an attorney residing in the country, the fees are divided.

On the whole you prefer a previous process, such as you have stated just now, to the establishment of a new jurisdiction?—I do.

A previous process in a court above, ending in a trial in the court below?—Yes; if the defendant chose to drive a plaintiff to it.

Supposing the first process issued in a cause coming from the country, and that upon that process the debt is settled, what is the profit that you suppose the country attorney to make?—He gets from fifteen to eighteen shillings.

Suppose the cause on the contrary be defended, and go to trial?—He gets in that case about fourteen or fifteen pounds.

In that case there are no double expenses of the agent in town thrown upon the client?—No; or very trifling, for copies of the proceedings.

The expense is exactly the same as if there were no double agency?—Yes, or nearly so.

In one case they divide it between them, and in the other case the one has the whole?—Yes, except a few trifling charges.

Those things make very little difference in the whole costs?—Very little.

Mercurii, 19° *die Martii*, 1823.

Lord Viscount ALTHORPE, in the Chair.

John Addison, junior, Esq. called in; and Examined.

John Addison, jun. Esq. (19 March.)

YOU are a barrister?—I am.

Of how many years standing?—Five.

Are you assessor to the sheriff of Lancashire?—One of the two assessors of the sheriff of Lancashire.

Do you sit as judge in the county court of Lancashire?—I preside in the county court of Lancashire, being retained by the successive sheriffs, but removable, though in fact always retained from my first appointment, five years ago; my brother, the other assessor, having been always retained from his first appointment, fourteen years ago.

Do you receive a fresh appointment on the appointment of every new sheriff?—Certainly.

Are you paid by fees, or by a fixed salary?—By a certain payment for every day that I sit in court.

How much do you receive per day?—It has varied, as the business has increased, from two guineas to four, last year it was four guineas; perhaps I ought to add, that the other assessor does not receive any remuneration, he gives the whole emolument to me.

Will you state, whether there is any difference in the constitution of the county court of Lancashire, from that of county courts in general?—Not in the constitution, but by Act of Parliament, the 34th Geo. 3. c. 58, causes, where the demand does not amount to 10*l.* cannot be removed without bail.

Those causes can only be tried by writ of justicies?—If the demand amount to 40*s.*

Is there any thing in Lancashire, which renders a writ of justicies easier to be procured, than in any other county?—The chancery of Lancashire sits in the town in which the county court is held, and grants that writ; it is shorter and cheaper than that which is obtained from the high court of Chancery.

What is the expense of a writ of justicies?—The first cost by the attorney to the client is two guineas and a half.

Is that the whole expense?—That is the whole expense, which upon taxation, the defendant would be ordered to pay; a larger sum is often demanded and received.

How

How much is demanded usually?—Three guineas, I think.

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Who decides upon the cases in the county court of Lancashire?—One assessor sits at a time as judge, and decides the law, the jury decide the fact.

Of how many does the jury consist?—Twelve.

Is their decision obliged to be unanimous, or is it by majority?—It must be unanimous.

What is the qualification of a jury?—There is no qualification required.

Have you any power of compelling the attendance of a jury?—None, except that power which is inherent in all inferior courts, and which is very difficult to be put in operation, which is by amercement.

Have you ever had occasion to try to compel the attendance of jurymen?—Yes, by threatening to summon those upon the assizes, who refused to attend upon the county court.

Do you find any difficulty in procuring the attendance of a jury?—Considerable difficulty, when the court sits at Preston.

How comes it that the decision in the county court of Lancashire should be a unanimous decision of the jury, when, in the other courts, it is decided by the majority of jurors?—I apprehend that a decision, by a majority, is the general law, but that it has been the practice beyond all memory to try by a full jury in Lancashire, as I believe it is in several other counties.

Have you any reason to believe, that that practice in Lancashire is considered to have been of such long standing, as to be regarded as law?—I apprehend it is so considered, in that upon writs of false judgment the fact is so stated, and I do not now that any objection has ever been taken to it; I have indeed assigned it as error, but that was only for want of better cause; I believe there was never any decision made upon it.

Are there any other differences in the proceedings of the county court of Lancashire, from the proceedings in the county courts in general?—I apprehend there are; the first proceeding in general elsewhere, I understand, is by summons first, and then distringas or attachment; with us it is by attachment against the goods in the first instance, which prevents the delay of a month.

Have you any mode in the county court of Lancashire of preventing the delays which are incident to such courts in general?—From time to time, rules of practice have been adopted which have altered the ordinary periods; not to speak to exact days, I should say, that in the first instance, the defendant is allowed a week before the plaintiff can push on the expenses, and during which time he may settle upon paying merely for the writ, or for the first process; he is then allowed about a fortmore to settle, upon paying only for the declaration; if he should not do that, judgment by default may be had, which is final if it be in debt, which is the general case.

Does the county court of Lancashire sit oftener than once a month?—Once a month in two towns.

How happens it then, that these proceedings can take place from week to week, as you mention?—Though the court sits only once a month for the trial of causes, the sheriffs office is constantly open for the dispatch of business; and the business is entered upon the books as done at the preceding court: this is analogous to the practice of the courts at Westminster, where business done in vacation, is entered as done in the preceding term.

Is that arrangement in consequence of any Act of Parliament, or merely a rule of court?—Merely by rule of court: and, perhaps, to prevent misapprehension, the exact time should be given; when I say a week and a fortnight, I do not mean, that those are the exact times. I have written down the exact times, which I will state to the Committee: if an action by justicies be commenced on the 18th of December, the writ would be tested on Tuesday the 5th, being the day on which the court sat, and the plaint will be entered in the books as levied on that day; the warrant on the justicies will be made returnable at the next county court, namely, Tuesday the 2d of January; the declaration may be filed in the office on or before Thursday the 11th; the plaintiff will have judgment by default, for want of a plea on Thursday the 25th. All those proceedings will be entered as of the court held on the 2d. The damages will be assessed by the jury at the court on Tuesday the 30th, on which day the cause would be tried, if the defendant should plead. In all actions, except for debt, the defendant gains nothing in point of time, by filing a plea; for whether he pleads or not, the plaintiff will have a verdict, judgment and execution, on Tuesday the 30th of January: in debt, where the judgment is final in the first instance, a plea will delay execution from the Thursday until

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the Tuesday following; but it delays it so little, that sham defences are not often made.

Is there any difference in the proceedings in your court, the pleadings and declaration, &c. from those in the courts above?—None, except that the assessors have encouraged the shortest possible modes of pleading; in general, only a certain sum is allowed, without regard to the length of the pleadings; in the courts above, the fees are generally according to the length of the proceedings.

Have you a table of the fees of the county court of Lancashire with you?—It does not fall within my province to tax costs, and I have no such table.

Can you state what is the average expense of recovering a debt under 40 *s.* in the county court of Lancashire, when it is resisted?—In answering that question, I think it would be fair to the attornies to say, that it is not their practice to commence a suit without first sending a written notice; and a great many causes are settled in that case, without any law expense, except 3 *s.* 6 *d.* which the attorney charges for that application, and sometimes foregoes; if that were unsuccessful, a county arrest would issue, for which the legal charge is from 12 *s.* 6 *d.* to 15 *s.*; it is an attachment against the goods to compel appearance.

Is that the first step?—That is the first step; if the defendant should not pay upon that service, a declaration would be necessary, and the next stage would make the expense about a guinea and a half; if an inquiry by a jury were necessary, it would be 2 *l.* 1 *s.* 1 *d.*; if the cause were in debt, it would be 1 *l.* 12 *s.* 5 *d.*; in general they are in debt. Supposing the cause were to be tried, the expense would vary considerably according to the number of witnesses; it probably might be from five to ten pounds.

That is in cases under 40 *s.*—Yes.

How much does the whole of that amount to?—What I have stated as the expense at each stage, includes that which goes before it.

Then the total expense, in case of a cause being tried, would amount to from five to ten pounds?—Yes; occasionally it would exceed ten pounds.

Will you state the expense in cases above 40 *s.*?—The commencement of a suit above 40 *s.* requires a writ of justicies, the common cost of which would be two guineas and a half; but for which, as I stated before, a common charge is three guineas; if the judgment should be by default for a debt, the costs would be 4 *l.* 4 *s.* 8 *d.*

Does that include the justicies?—It does; if the cause were tried, the costs would be from eight to twenty pounds; it would depend much upon the number of witnesses.

Who receives fees in the county court of Lancashire?—The under-sheriff, who is steward of the court.

You have stated differences in the county court of Lancashire from the county courts in general, which you consider improvements; do you upon the whole consider the mode of proceeding in the county court of Lancashire a convenient mode of recovering small debts?—I consider it much too expensive a mode; and it is inconvenient to the suitor to travel so far to the court; but if the trial must be according to the ordinary course of law, I cannot say that I consider the proceedings inconvenient.

Do you consider it worth a man's while to sue for a debt of 50 *s.* in the county court of Lancashire?— A great many such debts are sued for before me, where the parties voluntarily make their demands less than 40 *s.* in order to go upon the smaller scale of charges; and upon the whole, I cannot but say that they in general do recover their debts, or to speak more correctly, they recover judgment for their debts; very few come to be tried. I calculate that although there may be 5,000 causes a year in the court, I do not try above 2 or 300.

Is it not a great inconvenience in so large a county as Lancashire, that witnesses should have to be brought to county the court?—It is a very great inconvenience; but it has been to some extent remedied by the adjournment of the court to Manchester.

That took place last year?—It did.

For the first time?—Yes.

What effect has that adjournment produced?—I think it has prevented the ruin of a number of suitors.

Can you give any guess what sum of money has been saved by the adjournment?—I should say perhaps 200 *l.* at some of the courts.

Are the witnesses paid for coming?—The witnesses are paid; by holding the court at Manchester, thirty miles of travelling are frequently saved.

Is

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Is there any particular rate for the payment of the witnesses; are they paid by any scale?—The expenses are taxed in the office, and such a sum is given as will really pay their expenses; but will not be much remuneration for their loss of time.

The jurors receive something, do not they?—Very small fees, not any object to them, certainly.

Of what class of persons are those jurors?—They are usually retired tradesmen at Preston, and merchants at Manchester.

The better class of people?—Of a better class of people, certainly.

Do you find at Preston, that the jurors who attend are generally the same persons, or are they changed?—Too frequently they are the same persons; it is not so at Manchester.

Who has the summoning of them?—It is done in the office without my knowledge; a precept is made to an officer to return a jury, and the names are inserted by him, or probably by one of the persons in the sheriff's office; it is honestly done.

When you say the same persons attend, is it that the same persons are always summoned, or that the same persons only obey the summons?—The same persons are not always summoned; the number who can conveniently attend at Preston, may be from one to two hundred; those who are most willing are oftenest called upon, so that one man may be summoned three or four times in the course of a year.

Do you find any inconvenience from the same persons frequently attending on the jury?—Some; as a general principle, I think it is not advisable.

You said that a different description of jurors attended at Manchester; have you found a greater facility in obtaining a jury at Manchester than you are in the habit of doing at Preston?—Certainly.

Is the list of persons from which they are summoned at Manchester, larger?—There is no list; but the town contains an immense population, and I apprehend the officer who summons, looks in the directory or some book of that kind, and takes such persons as are represented there, to be in tolerably good circumstances.

They have no emolument for serving?—The emolument is not enough to pay for their dinner; there is a little fee.

What is the fee?—It varies according to the nature of the proceeding; it is one shilling upon some proceedings, two shillings upon some others, and four shillings upon others.

Divided amongst them all?—Yes.

How many causes do the jury ever have before them in a day?—Not more than ten causes that are actually tried; they are not much more quickly disposed of than they are at the assizes. I must do the advocates the justice to say they do their duty very well.

Do attornies or barristers ever practise in the court?—Always attornies, if there be not barristers; sometimes there are barristers.

Do the attornies plead?—They do plead.

Are the expenses of attornies allowed in a taxed bill of costs?—Yes, as advocates.

Is the expense of barristers allowed in a taxed bill of costs?—They are not allowed more than an attorney would be allowed.

How much is allowed for an attorney?—In a contested case under 40*s.* half-a-guinea?—in a case above 40*s.* a guinea; if the right were important, and the case occupied a long period, a larger fee would be allowed; but the instances are very rare in which that takes place; we have had a cause last all day; sometimes causes are tried to the extent of twenty or thirty pounds, and involving important rights.

Will you state any improvements that you think it would be desirable to introduce into the proceedings of the county court of Lancashire?—The question put to me is a very comprehensive one; I have put down upon paper some account of the modes in which debts and small demands are now recoverable by law, and I have stated so far as they occur to me, what are the advantages and disadvantages of the present mode; at the next meeting of the Committee, if I may be indulged until then, I will endeavour to give a further answer to this question.

[*The witness read from a paper as follows:*]

"The objects to be desired are,—

1st, That the remedy should be cheap.
2d, That it should be speedy.
3d, That it should be just.
4th, That it should be satisfactory.
5th, That it should be as little at variance with existing interests and institutions as may be.

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To attain these objects it may be useful to inquire, what are the modes in which small debts and demands are recoverable by the existing law; and the advantages or disadvantages attending these modes respectively. There are three ways of proceeding, viz. by summons, by plaint, or by writ, and these proceedings must be taken.

1st, In inferior courts not of record.
2d, In inferior courts of record.
3d, In superior courts.
4th, In courts of requests.
5th. Before justices of the peace in certain cases.

The jurisdiction of the maritime and ecclesiastical courts is so limited, that it is not further considered.

1st. *The inferior courts not of record*, are usually not cheap and seldom speedy, the judge and officer are usually the same person, who taxes his own bills, and is sometimes in fact, though not in name, attorney for one of the parties, and is almost always a practising attorney: the court is often either hereditary property, and considered as a mere source of income, or is liable to perpetual changes both of judge and officer; it is the interest of the officer to allow large fees, in order to induce attornies to practise in his court. The proceeding is by plaint without writ: the trial is by a jury, but there is no provision as to the qualification of the jurors, nor does the court possess any power to compel the attendance of jurors, or witnesses, or any control over the attornies or bailiffs: the pleadings are in writing, but the court cannot allow some modes of pleadings, which justice requires, and which are allowed in courts of record, nor can it enforce its own orders; it has no execution against the person, and consequently its judgments, when obtained, are often of little value. The trial can be delayed from six to twelve months, by removing the cause into a superior court; or the execution may be delayed for the same period, by writ of false judgment, after the cause has been tried; the time required to obtain a judgment, varies according to the practice of the different courts, from about a month to three or four months. The amount to be recovered must be under forty shillings, the costs of the first process about half-a-guinea; but a guinea is frequently demanded and received. The costs on judgment by default, about a guinea and a half. The costs after a trial usually three times as much as the debt. By writ of justicies the county court may hold plea to any amount, the proceedings by justicies are much like those by plaint, but more expensive; they are liable to stamp duties. The first cost of a justicies in Lancashire is two guineas and a half, in most other counties it is much more. Cost of judgment by default, four guineas. Costs after a trial from 8*l.* to 20*l.*

2d. *Inferior courts of record* are free from several of the foregoing objections, but are usually dearer than those not of record, and are in general very confined in their jurisdiction, extending only over certain cities, boroughs, &c. The pleadings are in writing, and are liable to stamp duties; the cost of the first process is usually from two guineas and a half to three or four guineas. The execution is against either person or goods. The causes are liable to be delayed by removal into a superior court before trial, which occasions a delay of half a year or a year, after trial the execution may be delayed for the same length of time by writ of error.

3d. *The superior courts of record* are more slow and more expensive, but more impartial and satisfactory; the proceedings are by writ, the pleadings in writing; stamp duties are payable. The time for recovering a debt varies extremely, according to the practice of the different courts, and the time of year at which the suit is commenced, usually from three to nine months. The expense of the first process from three to five guineas. Of judgment by default from six to twenty pounds. Of a trial from 30*l.* to an unlimited amount. The execution is against either the person or the goods. The execution may be delayed by writ of error after trial.

4. *Courts of requests* are cheap, speedy, and in general just, though complaints are sometimes made that a person who has a cause to try, will prevail upon such of the commissioners as are his own friends, to attend for him: the decisions are therefore not always satisfactory. The proceeding is by summons and is summary, the case is tried at a single sitting, without a jury, without attornies, without stamp duties, or written pleadings, and without appeal: the parties are permitted to give evidence themselves, and no testimony can be excluded by reason of what the law calls incompetency. The decisions proceed not upon any fixed principles

principles or rules of law, but upon the ideas of natural justice which the commissioners may entertain. The costs are only a few shillings for final judgment, the time for recovering a debt seldom exceeds three weeks, and cannot be protracted. The execution is against either the person or the goods; if against the person it is usually limited to forty days.

5. *The jurisdiction of justices of the peace* to recover debts or other demands is limited to certain cases, as wilful trespasses, wages, small tythes, &c. The proceedings are cheap and speedy, and in many respects resemble those of courts of requests; though perhaps the decisions are more satisfactory, the magistrates being usually more removed from any previous understanding with the parties. The process is a summons; there are no written pleadings, stamp duties, or attornies. In general an appeal lies to the sessions. Final judgment is given at a single hearing, and the costs do not exceed a few shillings. The execution is generally against either person or goods; seldom exceeding a certain limit of imprisonment."

When you speak of courts not of record, do you mean to confine it to county courts?—No; I mean all inferior courts proceeding at common law.

Is there not another inconvenience which you have not mentioned, in the distance which witnesses have to come to attend the county court?—Certainly; but it is one that occurs in almost all courts.

Would it not be very desirable in the recovery of small debts, if possible to save the travelling of witnesses so great a distance as they must necessarily travel now?—I think it would, by making the court go to them.

Do you conceive there would be any difficulty in making the county court go circuits in the county?—I apprehend no difficulty; but there would be some expense: the expense is the only difficulty at present in going to Manchester.

So far as your experience has gone, as to the removal of the county court of Lancashire to Manchester, you find it answer?—Perfectly; but it is a very great expense to the sheriff's office.

Do you believe that the fees received in the county court of Lancashire, are sufficient to remunerate the sheriff for holding the court in the way in which it is held?—I believe so; but I am not a competent judge, I do not know the amount of fees received in the court.

Do you know the number of causes tried?—The number of causes tried is from two to three hundred a year.

Are the fees in proportion to the number of causes?—More in proportion to the number commenced, than the number tried; the number of causes commenced may be about 4,000 annually.

Then they do not proceed to trial in the greater proportion of causes?—The greater proportion are settled without a trial, which I rather consider a proof of the goodness of the court.

You mentioned the number of 4,000, that is the number of causes that are begun?—Yes; I should think from four to five thousand; about three thousand of these are by writ of justicies; from one to two thousand for sums under 40*s.*; the larger proportion are for sums above 40*s.*

Are you acquainted with the proceedings in any other court than that which you have now mentioned?—Very little; with the county court of Cumberland I have some small acquaintance; the fees are there much less than they are in Lancashire.

Owing to what circumstance is that?—The pleadings are not written unless the defendant demands that they shall be. In Cumberland, a summons is in the first place granted by the sheriff, which is left at the defendant's residence any time before the return, (the next court-day); if the defendant does not appear, by giving the bailiff two-pence, a distringas issues to compel appearance, and the plaintiff gives notice of trial for the next court; so that the plaintiff is not delayed more than two months; and if the summons be served on the court day, only one month in recovering judgment. There is no pleading; giving the bailiff two-pence is called joining the action, and the parties proceed to trial without more ado. If the proceeding be by justicies the defendant may demand written pleadings; but I understand in practice does not.

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The costs in Cumberland are:

	Justicies. £.	s.	d.	under 40 s. £.	s.	d.
Instructions to sue	–	6	8			
Warrant stamp	–	5	3			
Drawing precipe, fo. 20 (usual length)	1	–	–			
Copy for the cursitor	–	6	8			
Paid for justicies	1	10	6			
Fee thereon	–	6	8			
First Court.						
Paid for summons	–	4	–	–	1	–
Attorney's fee	–	2	–	–	1	–
Second Court.						
Paid for distringas	–	2	–	–	1	–
Attorney's fee	–	2	–	–	1	–
Paid bailiff	–	2	–	–	1	–
Subpœnas each, paid sheriff	–	2	–	–	1	–
D° attorney	–	2	–	–	1	–
D° bailiff	–	2	–	–	1	–
Paid entering cause	–	1	–	–	–	6
Attorney's fee on trial	–	10	–	–	5	–
Paid sheriff recording verdict for precept and taxing costs	–	6	–	–	3	–
Attorney's fee thereon	–	4	8	0	2	4
Carriage of justicies	–	4	8			
Witnesess allowed according to distance.						
£.	6	6	1	1	1	10

Thus for a cause under 40 *s.* the costs are:

	£.		
To the court	–	6	6
To the bailiff	–	4	–
To the attorney	–	11	4
	1	1	10

There is no difference in the expense of judgment by default, and judgment after trial. I do not know how a jury trial can be had cheaper than this: perhaps money goes farther in Cumberland than in Lancashire.

Does the county court of Cumberland always sit in the same place?—I believe the county court of Cumberland is held in several great towns of the county; not each month in each town, but one month in one town, and another month in another town.

Is the judge in the county court of Cumberland, a barrister or not?—He is not a barrister, he is the under sheriff.

He is the county clerk?—I apprehend there is no such officer in that county; there is none in Lancashire; the under sheriff acts as judge of the court.

Is a jury impannelled in the county court of Cumberland?—Yes.

Is it a jury of twelve?—It is.

Does it decide in the ordinary manner by unanimity?—In the ordinary way.

Do you know whether there is any difficulty in procuring the attendance of jurors?—I do not know.

You do not know what class of persons they are?—I do not.

Do you know whether the proceedings in the county court of Cumberland give satisfaction generally?—I believe they do, saving that the proceeding by justicies is extremely expensive.

Are they in the habit of proceeding by justicies in the county court of Cumberland to a great extent?—Not much.

You do not know the average number of causes that are tried in a year?—I do not.

Or whether there are many causes tried generally?—Two or three at each court, I believe.

You

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You say it sits in the different towns of the county, does it sit only once a month?—Only once a month.

Do you know in how many towns of the county it sits?—I do not know; I think Carlisle, Cockermouth and Whitehaven, but I am not sure as to that.

Then it only sits once a quarter in each town?—Yes.

Then how do they manage where a person is to be summoned; there must be a great interim of time; suppose a cause is defended, and the defendant takes advantage of all the opportunities he has of deferring a cause from one court day to another?—I believe no such opportunities are given him of delay.

Have you ever thought of the comparative advantages of the two systems, in the courts of Cumberland and Lancashire?—I have.

Which do you think is most conducive to justice?—For small sums I think it better that the pleadings should not be put in writing; giving the parties the option of having them in writing provided they would be at that expense.

In causes under 40*s.*?—Yes; under 40*s.*

The number of causes you mentioned as tried in the county court of Lancashire, includes judgments by default, as well as judgments by trial?—I consider the number of issues tried from 2 to 300, and of inquires before a jury, after judgment by default, about 100 more. If the committee wish to know, what proportion are settled in each particular stage, I should think half are settled on the first process, and three-fourths of those that remain on judgment by default, which is final without an inquiry, in debt, the common action.

Do you find that the proceedings generally give satisfaction?—I would rather the answer came from a more impartial witness; so far as the proceedings of the officers (except the bailiffs) are concerned, I believe they are popular. There are, certainly, bad complaints of the expense and against the bailiffs, and sometimes against the attornies; the expense is unavoidable, the complaints against the bailiffs are overstated, and those against the attornies often groundless: the practice of the attornies in this court is, in general, liberal and respectable, I take pains to make it so.

Do you think it would be a sufficient security for that precision which you think desirable, to make it only necessary to have the proceedings in writing when the defendant demands it?—To the extent of 40*s.* I should think so.

Should you not think so above 40*s.*?—I would not myself venture to recommend it to go beyond that.

What do you mean by precision?—The course of pleading which is adopted in the courts.

Do you mean by that, the explaining exactly the nature of the debt?—So far as it is explained by them.

Do you think that a defendant gains any very great advantage, in point of explanation, from the long pleas which are filed in the superior courts?—I encourage very short pleading in my court, and I do not find any inconvenience arise from that.

Would it not be sufficient if a bill of particulars was attached to the summons?—I think so, to the extent of 40*s.*

Why would that not be sufficient above 40*s.*?—I should be afraid, that important rights would be decided upon, without sufficient consideration.

What important rights do you mean?—Executory contracts; some contracts in the nature of mercantile guarantees; some between landlord and tenant, between master and servant, builder and employer, the owners of adjoining lands as to fences, trespasses to land, warranties of cattle, the carrier, the insurer, the coach proprietor, and some accounts between persons engaged in trade, who are frequent suitors in my court, as it now is.

From 40*s.* to 10*l.*?—From 40*s.* to 10*l.* but often to a greater amount.

Would not a bill of particulars, added to the summons, remove that objection in the case of accounts?—I think it should still be left to the parties, if they pleased, to resort to the common law method of proceedings.

In what respect does the common law method of proceeding, explain more clearly the demand, than a bill of particulars?—In ordinary cases not near so much, but where there is a peculiarity in the contract, that contract is described; and where the demand involves a question as to the right to possession of property, trespasses to land, or to the person, slander, and some other cases, the pleadings confine the point to be tried within a narrow compass, which is often desirable.

Does not the necessity of filing a plea in common law, increase the expense very much?—It certainly does in many cases, but not in all.

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As you say, that in some cases a bill of particulars would give a sufficiently clear exposition of the demand, is there no possibility of confining the necessity of putting in pleadings according to common law proceedings, to those cases in which you think it would be advantageous that such pleadings should be put in?—It would be difficult to say in what officer the discretion should lie.

Why might not the discretion lie with the defendant, as the party most interested?—I agree to that, if the defendant has the option.

You think that in any cases below 10*l.* giving the defendant the option of calling on the plaintiff to put in pleadings according to common law proceedings, would be a sufficient security for him?—I cannot say that I could recommend it to go further than 40*s.* though I do not myself apprehend much mischief from its being extended to 10*l.*

Do not you know, that even in law proceedings where they have the benefit of pleadings, they very often apply for a bill of particulars, as setting forth the thing more clearly than any other mode?—Yes; and it is very often done in my court; it occasions considerable expense, and is often called for in order to put fees into the pockets of practitioners, where it is unnecessary; it would be better to make it part of the first process.

But when it is necessary, does not it set forth the whole case more clearly than a declaration?—Very much so; I should observe, there is some precedent to carry proceedings by mere summons to 5*l.*; a magistrate already goes to 5*l.* in some instances, without any written pleadings.

Has it ever occurred to you, that it might be a convenient mode of recovering small debts, to enable the justices of the peace to decide upon them?—Yes.

Will you state in what manner you think that might be done?—In the same manner in which they decide wilful trespasses.

That is by summoning, is it not?—Summoning.

Without the intervention of a jury?—Yes.

How far do you think it would be safe to extend their jurisdiction?—I should not hesitate to say to the extent of 40*s.*

You have some doubts as to whether it should be extended to 10*l.*?—Yes; and I am aware many persons would feel great objections as to its going even to the extent of 40*s.*

Should you allow of any appeal in that case?—Certainly.

To what court?—To the quarter sessions.

Do you not think that appeals would be very frequent?—I think not; they are not frequent against convictions under the Trespass Act; nor in those cases in which justices can now adjudicate upon debts; if it extended to 10*l.* I think they would be then very frequent.

Is there in the county court of Lancaster any thing in the nature of an appeal?—The fact cannot be tried over again, the pleadings are subject to examination.

In what way?—They may be removed to a superior court.

Is there ever any reference, after a decision, to yourself in your chamber?—There occasionally is, if, when I am trying a cause, the advocates take a legal objection, and are desirous it should be discussed at chambers afterwards; if I think it a matter of any importance I am accustomed to grant such an application, and in that case it comes to be considered by both the assessors together, and their opinion upon the point is sent to the under sheriff in writing, and communicated to each party.

Do you think that on that account there is any advantage in there being more assessors than one to the sheriff of the county?—Decidedly; because it is an appeal without any expense.

Is any thing charged for that appeal?—Nothing by any person; the attornies charge nothing for attending me on those occasions.

Is it often applied for?—But seldom; there may have been about half a dozen instances.

Do you generally grant it when it is applied for?—Yes; I know no instance in which there has been a refusal of it, where it has been seriously requested. We find a great advantage in having two assessors to decide upon such applications as are made in the course of a cause to a judge at chambers, where they decide both law and fact, and must be guided by discretion; such cases occur two or three times a week; the assessors have no fee for such orders, and the under sheriff's fee is so small it hardly pays the clerk for copying the orders.

What would be the effect of preventing attornies practising in the court?—Almost to starve a certain class of persons. The objection to the exclusion of attornies

nies would be, that causes would be hastily and occasionally improperly decided.

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(19 March.)

How many attornies do you think you have practising in your court?—All attornies have a right to practise there; the number of those who plead as advocates, is about three or four in each town where the court sits.

Then it does not require an order of court to admit an attorney to practise in your court?—No.

What is the qualification necessary?—Being an attorney.

Does not the pleading of the attorniess delay the proceedings?—Undoubtedly; but I am not prepared to say, that it is not an advantage: I think it is; their arguments sometimes assist the judge, and do not often mislead the jury.

Do you not think, that under a certain sum, it might be prevented with advantage?—I think not, unless it were merely by withholding fees from them.

You think there would be no advantage in any case of any amount of debt, in a positive refusal to hear them?—No; I should think it dangerous.

Supposing no fees were allowed in costs for the employment of attornies or counsel, what effect do you think that would have?—That, in general, they would not be employed.

Do you think they would not be employed, when it is desirable that they should?—No, I cannot say that.

Do you think it would only prevent their being employed in cases where they are not necessary?—I think that would be all. Though I should observe, that if the jury were dispensed with and the attornies taken away, there would be little of that publicity in the proceedings which forms an excellent check upon the conduct of the judge: whatever I do in court, is usually seen by near a hundred people, and often more. Though I think the speeches of the advocates much longer than is necessary, it is a great satisfaction to the suitor to know, that every thing has been said, that could be said, in his behalf: both the assessors and the advocates endeavour, as far as they are able, to make the sitting of the court resemble the assizes: it may seem a small matter, whether the assessors sit in their robes or in coloured clothes, but an attention to propriety in this particular has really much effect in satisfying the public.

In the case of assessors to the sheriff being appointed in every county in England, to whom do you think that appointment ought to be left?—As a general principle, I think the appointment of judges ought to be by the king.

As those assessors are not judges, but simply assistants to the sheriffs, do you conceive that the same principle applies to them?—I consider them as judges; I think it desirable they should not be removable with every sheriff, though it would be desirable they should be removable by some person; as for instance, the judges of the King's Bench or the lord chancellor.

Of course it is your opinion that they should not hold their places during pleasure?—I think decidedly, they ought not to hold their places; that is, not at the pleasure of the sheriff.

Not during the pleasure of the appointer?—Let one man appoint and another man remove, and there would be less objection to their holding their places during pleasure.

Do you not think that it is a great disadvantage for any person acting in the capacity of a judge, to be removable at pleasure in any court?—Yes; the independence of the judicial character is a thing desirable.

What objection do you think there would be to this judge being appointed by the justices at session?—I can hardly see, indeed I cannot see any, except that it breaks in upon the principle of such persons being appointed by the crown, which we consider the fountain of justice. If the office were of any value, it would be the interest of the present assessors that the appointments should be by the justices, with whom long previous service would be a strong recommendation; if it were elsewhere, the places might possibly be promised without a knowledge of that circumstance, and they might see a London barrister come down to occupy their seats, and perhaps carry away a portion of their other business.

When the sheriff summons a jury to assess damages, who appoints the assessor?—The sheriff; I am his usual officer on that occasion also.

With this precedent, why should you think it an anomaly that the sheriff's assessor should not be appointed by the crown?—The assessor upon a writ of inquiry to assess damages, is only appointed for the occasion, and it is not a court; I think it would be desirable that those inquiries should be executed before some fixed judge, rather than by a person appointed as I am from time to time.

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(19 March.)

Supposing the assessor was appointed by the sheriff, subject to the approbation of the chiefs of the courts at Westminster, for the time that he behaves himself well, would not that be a sufficient check upon any improper appointment on the part of the sheriff?—It probably would, but I think it would not be so good a mode as the appointment by the justices of the peace.

If the assessor was appointed by the justices, would it be desirable to put a veto in any other authority?—I should think not, it would not be complimentary.

Do you think in a court for the recovery of debts under 10*l.* it is desirable to leave it in the power of the judge to administer an oath to the plaintiff and the defendant?—To a certain extent I should think it very desirable, but I doubt as to the sum at which it ought to stop; forty shillings is that to which the current of my mind bears.

Do you think in any case it should be in the power of the judge of the county court to order a new trial?—I think it should.

In what case?—In case of a verdict directly contrary to evidence.

Have you the power of ordering a new trial?—There are some decisions which say that we have not; not very recent ones; the practice of ordering a new trial, is a modern practice.

In point of fact, have you ever ordered a new trial?—I only recollect a single instance.

How long have you been judge?—Five years; it was before that time: a false stamp table was produced, and in consequence a written instrument was not read, because it appeared not to have a proper stamp; upon reference to the Act of Parliament, it was found that it had a proper stamp, and therefore a new trial was granted; that is the only instance in which I know after a trial, that there has ever been a new trial.

Is it ever the custom in the county court of Lancashire, to order a defendant to pay by instalments?—No.

Have you the power to do so?—No.

Should you think it desirable that you should have that power?—I have no experience upon it, and no means of forming an opinion.

Have you ever known a defendant escape out of your jurisdiction?—I have known him sell his goods the moment the trial was over; there is no process against the person in our court.

In that case you have no means of following him?—Only by an action upon the judgment, which is a very bad proceeding.

An action in a superior court?—Yes.

In the case of the county court going circuits, to whom do you think it should be left to settle in what places they should sit?—The justices of the peace.

Should they also have the power of arranging how often it should sit?—I think so.

In whom do you think the appointment of the officers of the court should be vested?—I think in the judge.

Should he have the power of removing them at pleasure?—Yes.

Will you state the grounds of those two opinions?—To ensure a due performance of the duties, and to prevent the offices being executed by deputy; though he ought not to have the appointment unless there was a schedule of fees; that is, no man should be allowed to tax the costs of his own nominee.

Ought he not to have the power of appointment and removal, in order to have an efficient check upon their conduct?—Certainly; and there ought to be some one responsible for their acts; I think he ought to be responsible for them.

You stated, that in some cases you think the pleadings necessary, and that in others you think they might be dispensed with; how many cases should you think, in the course of a year, you have decided, in which the pleadings were necessary?—A small proportion, certainly; I should think they would hardly be necessary in one-tenth of the cases that come; I am sure they are useless in nine cases out of ten.

Are they not used in almost every instance?—There is a certain course that must be used in every case.

In the tenth of the cases that you talk of, you could not make up your mind satisfactorily for decision without them?—I think it would be giving a great latitude to the judge.

Veneris, 21° die Martii, 1823.

Lord Viscount ALTHORP, in the Chair.

John Addison, Esq. called in, and further Examined.

John Addison, Esq.

(21 March.)

IN your last day's examination you wished to reserve answering the question which was put to you, as to what alterations you think would be desirable to be made in the mode of proceeding and in the whole composition of the county court of Lancashire; have you since further considered that subject?—I have endeavoured in answer to that question, to draw out a scheme for the regulation of a court for the recovery of small debts and demands.

Will you state the particulars of that scheme?—

[*The witness read the same as follows:*]

"I think it desirable that the court should be held at such times and places as the Justices of the peace may appoint; that a proper person should be appointed to preside; that the court should proceed by summons and by plaint; that for demands under 40*s.* the proceeding should be by summons, to be determined in a summary manner without a jury; that the summons should be in a form, to be set forth in a schedule; that the court should not hear or determine any complaint in the absence of the defendant, unless it should be proved upon oath, that the defendant had been duly summoned three days at least, before the hearing, by delivery of a duplicate of the summons to the defendant personally, or to his wife, or by leaving it at his place of abode, provided, that where the defendants were partners, it should be sufficient to summon one of them; that it should be in the discretion of the court to examine upon oath or affirmation, as well the parties as their witnesses, and no objection to the competency of any witness should be allowed, but the witness should be heard, and the objection affect his credit only. The order to be in a form to be given in a schedule. The sum awarded, to be levied by distress and sale of the party's goods, and also either for default of such distress, or in the first instance and without any previous warrant of distress, if the party recovering so desire, the party condemned to be committed to the common jail or nearest prison, for the space of one calendar month, unless the sum awarded shall be sooner paid; but any party so committed, to be at liberty to take the benefit of the Acts for relief of insolvent debtors. The bailiffs to give security for the performance of their duty, and to be paid for executions, as they are now by law paid for distresses for small rents. No proceeding, for any demand under 40*s.* to be liable to any stamp duty. The party summoned to have power, before hearing, to require a plaint, and appearance to be entered, finding two sureties in 10*l.* each, to abide the judgment; the cause then to proceed as in the case of demands exceeding 40*s.* The judge to have the power, after hearing the case, and before deciding, to convert the summons into a plaint, if he think it advisable. No appeal from decisions under 40*s.* where the party summoned has not found securities before trial. Demands of 40*s.* and upwards, to be by plaint and summons; at the return of the summons, the defendant to appear, or judgment to be given by default. The cause to be removable, before trial, into a superior court, but the party removing, to find two sureties in 20*l.* each, to abide the judgment; the writ removing the cause, to be made returnable instanter. If the defendant appears, the declaration, plea, issue, &c. to be as at common law; the cause to be tried, or damages assessed by a jury. The qualification of jurors to be fixed; either twelve jurors to be sworn out of twenty-four returned, and give an unanimous verdict, or the sheriff to return twelve only, and so many as appear to be sworn, and decide by a majority; the judge to have no vote, unless the jury be equally divided. Power for either party to remove the cause after judgment, and to traverse the verdict, upon finding two sureties in 40*l.* each, to abide the judgment; if the judgment be not fulfilled, the court to declare the recognizance of the sureties forfeited, and compel payment of the sums acknowledged, without further notice against the sureties, in like manner as against the principal, until the sum awarded shall be paid, provided that all payments made by the sureties, shall go in discharge of the sum awarded, to be paid by the principal. The party to be sued, wherever found, though the debt may have arisen elsewhere. A table of fees to be given in the Act, and not exceeded. Judgments to be entered

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in a book, and signed by the judge; and all executions to be under his hand and seal. The same stamps as are now used on common plaint, to be used in plaints above 40*s*. Proceedings in all other courts to go on as at present, the court having only a concurrent jurisdiction to be a court of record; the county court for all purposes, except the trial of causes, to be holden as heretofore."

Why would you make an alteration in respect to costs from the rules in the courts above?—The actions for slander, for petty assaults and petty trespasses to lands, are frequently very unnecessary and improper actions: perhaps I may mention that by Act of Parliament the judges of the superior courts have now that power.

Not in assumpsit?—Not in assumpsit, but in trespasses.

Do you find in your experience, that cases under forty shillings are frequently disputed?—Not so frequently in my court as those above forty shillings.

Are they all tried by jury in your court?—Yes.

Of any amount?—Yes.

What preliminary investigation do they undergo before bringing them before a jury, which facilitates the previous settling of them?—The practice is so arranged that the defendant has several opportunities of settling amicably, at comparatively a small expense, which I explained on a former day. The defendant gets very little time by putting in a plea, and in general pleas are not put in, except when there is some real cause to try; so that the number of undefended causes tried is very small.

Do you find many questions of real doubt in those cases under forty shillings which come to trial?—Yes.

Do you find that causes of that magnitude form any considerable part of the whole burden of business that is thrown upon the jury of your court?—Perhaps one-fourth of the time of the jury may be taken up with causes under forty shillings, and three-fourths with those above forty shillings.

From the nature of your jurisdiction, are not many of those petty questions, which really furnish matter of dispute in your court, such as could not possibly occur in a jurisdiction merely for the recovery of debts?—Yes; I try all sorts of demands; a great many of those which are under forty shillings, are actions for assaults and slander, not things to be encouraged certainly.

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